

HEARING
BEFORE THE
UNITED STATES
COMMISSION ON CIVIL RIGHTS

HEARING HELD
IN
ALBUQUERQUE, NEW MEXICO
November 14-15, 1972

Members of the Commission:

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JOHN H. POWELL, JR., *General Counsel*

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UNITED STATES COMMISSION ON CIVIL RIGHTS

TUESDAY, NOVEMBER 14, 1972

The U.S. Commission on Civil Rights met at 9:00 a.m. in the Convention Center, Albuquerque, New Mexico, Maurice B. Mitchell, Commissioner, presiding.

PRESENT: Maurice B. Mitchell, Commissioner; Robert S. Rankin, Commissioner; John A. Buggs, Staff Director; John H. Powell, Jr., General Counsel; Paul Alexander, Assistant General Counsel; and J. R. Avena, Regional Director.

PROCEEDINGS

COMMISSIONER MITCHELL. Good morning. I call this opening session of the United States Commission on Civil Rights to order.

I would like to begin by swearing in the reporter, the engineers, and the clerks in accordance with the rules of the Commission.

Joe McLaughlin.

[Whereupon, Joe C. McLaughlin was sworn as reporter.]

COMMISSIONER MITCHELL. Don O'Neil.

[Whereupon, Mr. Don O'Neil was sworn as sound engineer.]

COMMISSIONER MITCHELL. Enoch Perry, Concepcion Baiza, and Benjamin Chavez, Jr.

[Whereupon, Enoch Perry and Concepcion Baiza were sworn as clerks.]

COMMISSIONER MITCHELL. All witnesses, of course, will be sworn in, and I will swear in Mr. Chavez when we can find him.

Ladies and gentlemen, I am Maurice Mitchell, a member of the United States Commission on Civil Rights and chancellor of the University of Denver. I wish to welcome you to this hearing conducted by the Commission and introduce to you Dr. Robert S. Rankin, on my right, who is professor emeritus of political science at Duke University, Durham, North Carolina,

and is really chairman of the Commission's subcommittee that is conducting this hearing panel. Dr. Rankin was involved in that snowstorm last night and arrived in the middle of the early morning hours and has asked me to preside at today's session.

I also wish to introduce to you the members of the Commission's staff who will participate in this hearing. They are on my left, on your right, Mr. John A. Buggs, Staff Director of the Commission. Next to Commissioner Rankin is Mr. John H. Powell, Jr., the General Counsel of the Commission. Mr. Isaiah T. Creswell, Jr., Assistant Staff Director of Field Operations for the Commission, who is not here at the moment. And Mr. J. Richard Avena on the far side of the room who is Director of the Commission's Southwest Regional Office.

The civil rights of American Indians have long been a matter of intense concern to the United States Commission on Civil Rights. For many months our staff and members of our State Advisory Committees have been gathering information which is now culminating in a series of Commission hearings on Indian affairs, of which this hearing in Albuquerque is the first.

Later in this week we shall hold a hearing in Phoenix, and in the near future we will hold similar hearings in locations which have large Indian populations, including one early next year or in the spring of next year on issues of concern on the Navajo Reservation.

This hearing is being held under the authority of the Civil Rights Act of 1957, as amended. As required by law, notice of this hearing was published in the *Federal Register* on Friday, October 13, 1972. A copy of this notice will be introduced into the record, Mr. Powell, as Exhibit No. 1.

[Whereupon, the document referred to was marked Exhibit No. 1 and received in evidence.]

The Commission is an independent, bipartisan agency of the United States Government established by Congress in 1957. Its duties are as follows:

1. To investigate sworn allegations that citizens are being deprived of their right to vote by reason of their race, color, religion, or national origin;
2. To study and collect information regarding legal developments which constitute a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin;
3. To appraise Federal laws and policies with respect to the

equal protection of the laws because of race, color, religion, sex, or national origin;

4. To serve as a national clearinghouse for information with respect to denials of equal protection of the laws because of race, color, religion, sex, or national origin.

Under the law, the Commission is required to submit reports to the President and the Congress which contain its findings and recommendations for corrective legislation or executive action. To enable the Commission to fulfill its duties, the Congress has empowered the Commission to hold hearings and issue subpoenas for the attendance of witnesses and the production of documents. In order to produce as credible a record as possible, the Commission is authorized to take testimony under oath.

When we have finished this opening public session, in just a few moments, we will go into executive session in another room on this floor in accordance with the statute governing Commission hearings which provides for such a session, closed to the public, during which persons who may be defamed, degraded, or incriminated by testimony given at the public sessions will have an opportunity to be heard.

A period has also been set aside during the course of the hearing to give time to persons who have not been subpoenaed but who feel they have relevant testimony which the Commission should hear.

The executive session is the only session closed to the public. At all other sessions the public is cordially invited to attend as observers.

I can best explain the functions and limitations of this Commission by quoting from a decision of the United States Supreme Court early in the Commission's history. This is the quotation:

This Commission does not adjudicate; it does not hold trials or determine anyone's civil or criminal liability; it does not issue orders. It does not make determinations depriving anyone of life, liberty or property. In short, the Commission does not and cannot take any affirmative action which will affect an individual's legal rights. The only purpose of its existence is to find facts which may be subsequently used as the basis for legal or executive action.

That is the end of the quotation.

In carrying out its legislative mandate, the Commission has made detailed studies in the fields of administration of justice, education, employment, health services, housing, and voting. To augment its studies in these fields it has held hearings in representative communities throughout the country.

We have come to Albuquerque as part of the Commission's project of investigating the civil rights status of reservation and nonreservation Indians. The Commission is deeply disturbed by the fact that, of any identifiable ethnic group of American citizens, the Indians have one of the highest unemployment rates, the lowest per capita income, that their infant mortality rates are higher and their life expectancy lower than the rest of the population of the United States. Due in great part to the fact that they have been deprived of adequate schooling, they generally are relegated to the lowest rungs of the job ladder with almost no chance for upward mobility.

Thus, we have come to Albuquerque here in New Mexico, a city and State which are home to many Indian tribes, to ascertain the nature and extent of these problems and, hopefully, to arrive at a means of rectifying them. As I have said, from here we shall go to other communities in the same quest.

I would like to emphasize that a Commission hearing is not an attempt to embarrass any one State, city, or individual but will explore problems that are representative of civil rights problems. The Commission's history shows that it has always been scrupulously fair and honest in its presentations even though the subject matter may be intrinsically emotional. The same objectivity will prevail at this hearing.

Federal law protects all witnesses who are subpoenaed to appear before the Commission.

At this point, I should like to explain that Commission procedures require the presence of Federal marshals at its hearings. Although the Commission and the marshals know that the majority of citizens would not wish to impede the orderly process of this hearing, the marshals have determined that the security measures they have instituted will help to provide an atmosphere of dignity and decorum in which our proceedings can be held.

We will hear from representatives of the local, State, and Federal governments, tribal governments, members of the private sector, and individual citizens. We shall examine each phase of the socioeconomic structure as it affects American Indians, recognizing that this ethnic group represents diverse histories, cultures, and social institutions. We shall also give careful consideration to the question of Indian control of Indian institutions and of programs serving Indian communities.

This session will end after the reading of the rules by Commissioner Rankin. The Commission will then go into exec-

utive session, as I have said previously, in accordance with the statute governing Commission hearings which provides for such a session, closed to the public, during which persons who may be defamed, degraded, or incriminated by testimony to be given at the public sessions will have an opportunity to be heard.

The public session will reconvene later this morning, hopefully very close to 9:30 a.m. We will recess for lunch today between 1:00 and 2:00 p.m. Today's session will recess at 7:30 o'clock this evening. Tomorrow's session on Wednesday will begin at 9:00 a.m., with a lunch recess from 12:30 to 1:30.

The time tomorrow between 5:30 and 7:00 has been set aside for unscheduled testimony.

The hearing will conclude at 7:30 p.m. tomorrow evening, Wednesday.

Now I shall ask Commissioner Rankin to read the rules of the hearing. Commissioner Rankin.

COMMISSIONER RANKIN. Thank you, Dr. Mitchell.

As the Commissioner has said, the hearing has been divided into two parts after the opening session. First, there will be an executive session which will be held in this room and which will begin in a few moments. At this executive session or closed session, individuals have been invited to appear, if they so desire, and to state their objections to the public presentation of any testimony which they believe might be damaging to them.

Following such objections the Commission will decide whether the testimony will be received in public. Then, beginning around 9:30 a.m., testimony will be received in public in this room and continued through Wednesday evening.

At the outset I should emphasize that the observation I am about to make on the Commission's rules constitutes nothing more than brief summaries of the significant provisions. The rules themselves should be consulted for a fuller understanding. Staff members will be available to answer questions which may arise during the course of the hearing.

In outlining the procedures which will govern the hearing, I think it is important to explain in some detail the differences between the public session and the executive session.

Section 102(e) of our statute provides, and I quote:

If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade or incriminate any person, it shall receive such evidence or testimony in executive session. The Commission shall afford any person defamed, degraded or incriminated by such evidence or testimony an

opportunity to appear and be heard in executive session, with a reasonable number of additional witnesses requested by him, before deciding to use such evidence or testimony.

The executive session to follow this morning is being held to comply with this statutory mandate. Several weeks ago the Commission met in Washington and received the material which has been collected in preparing for this hearing. It was then determined that certain individuals were entitled to a hearing in executive session.

Accordingly, these individuals were notified of their right to appear at this session. Each also was sent a copy of the Commission's rules which explained this right and was invited to communicate with the Commission in the event he wished to appear or had any questions concerning the executive procedure.

Although some of these persons have been subpoenaed by the Commission to appear during the public session of this hearing, none of them were subpoenaed to appear at this executive session. Several weeks ago they received notice of this executive session, an explanation of its purpose, and an invitation to appear if they so desired. They are not required by law to appear. The decision to appear or not to appear lies entirely with them. The executive session is for their benefit alone and, if they determine to forego this opportunity, that is certainly their privilege.

In providing for an executive session, Congress clearly intended to give the fullest protection to individuals by affording them an opportunity to show why any testimony which might be damaging to them should not be presented in public. Congress wished to minimize damage to reputations as much as possible. Congress wished to provide persons an opportunity to rebut unfounded charges before they were well publicized. Obviously, this protection would be meaningless if the person were confronted with and required to respond in public to the anticipated allegations.

Following the presentation of the testimony in executive session and any statement in opposition to it, the Commissioners review the significance of the testimony and the merit of the opposition to it. In the event they find the testimony to be of insufficient credibility, or the opposition to it to be of sufficient merit, they may refuse to hear certain witnesses even though they have been subpoenaed to testify in public session. An executive session of this type is the only portion of the entire hearing which is not open to the public.

The public hearing which begins later this morning is somewhat different. The public and the press are invited and urged to attend the open sessions.

Copies of the rules which govern this hearing may be secured during any recess from a member of the Commission's staff. Persons who have been subpoenaed and persons who have been afforded an opportunity to appear in executive session have already been given their copies.

All persons who are scheduled to appear in public session who live or work in New Mexico have been subpoenaed by the Commission.

All testimony at the executive and public sessions will be under oath and will be transcribed verbatim by the official reporter.

All witnesses at public and executive sessions are entitled to be accompanied and advised by counsel. Counsel may subject his client to reasonable examination. He also may make objections on the record and argue briefly the basis for such objections.

Persons subpoenaed to the public session and persons who have been afforded an opportunity to appear in executive session may request that witnesses be subpoenaed on their behalf. All requests for subpoenas must be in writing and must be supported by a showing of the general relevance and materiality of the evidence sought.

In addition, persons who have been afforded an opportunity to appear in executive session may be accompanied by a reasonable number of witnesses who need not be subpoenaed. They may also submit statements prepared by themselves or others for inclusion in the record, provided these are submitted within the time required by the rules.

All witnesses at public sessions have a similar right to introduce statements into the record. At public sessions there is a limited right of cross-examination which is spelled out in detail in the rules.

Finally, I should point out that in many cases the Commission has gone significantly beyond congressional requirements in its rules to provide safeguards for witnesses and other persons. We have done this with the intent of insuring that Commission hearings be conducted in the fairest and most impartial manner.

COMMISSIONER MITCHELL. Thank you, Commissioner Rankin.

The Commission will now adjourn for an executive session,

which I hope will not take longer than the next 15 minutes. We propose to reconvene in this room at or near 9:30.

The Commission is now adjourned.

[Whereupon, at 9:13 a.m., the public session of the Commission was recessed, and the Commission proceeded in executive session.]

TUESDAY MORNING SESSION

November 14, 1972

[The public session of the Commission was resumed at 10:00 a.m., Tuesday, November 14, 1972.]

COMMISSIONER MITCHELL. I hereby call this second session this morning of the United States Commission on Civil Rights hearing to order.

Is Governor Valentino Garcia of Santo Domingo Pueblo present?

[No response.]

I am informed Governor Timothy Anaya will take his place and lead us in prayer. Sir, will you lead us this morning in prayer as we open this hearing?

[Recitation of the Lord's Prayer in unison led by Hon. Timothy Anaya, Governor, Laguna Pueblo.]

COMMISSIONER MITCHELL. Thank you.

Is Mr. Chavez here? Will you come forward?

[Whereupon, Mr. Benjamin Chavez, Jr., was sworn as clerk.]

COMMISSIONER MITCHELL. Ladies and gentlemen, I am going to read an opening statement that is in part a duplicate of the statement I made earlier but is the procedure of the Commission to have read at this formal opening session following the executive session.

I am Maurice Mitchell, a member of the United States Commission on Civil Rights, and chancellor of the University of Denver, in Denver, Colorado.

I wish to welcome you to this hearing conducted by the Commission and introduce to you on my right, your left, Dr. Robert S. Rankin, professor emeritus of political science at Duke University in Durham, North Carolina, a member of the Commission, who is subcommittee chairman for this hearing panel. I am serving as presiding officer today at his request.

I also wish to introduce to you the members of the Commis-

sion's staff who will participate in this hearing. They are: On my left, your right, Mr. John A. Buggs, Staff Director of the Commission. On my right, Mr. John H. Powell, Jr., General Counsel of the Commission; sitting next to him at the moment, Mr. J. Richard Avena, Director of our Southwest Regional Office; beyond him, Mr. Paul Alexander, a member of the Commission's legal staff.

The civil rights of American Indians have long been a matter of intense concern to the United States Commission on Civil Rights. For many months, our staff and members of our State Advisory Committees have been gathering information which is now culminating in a series of Commission hearings on Indian affairs of which the hearing in Albuquerque that begins today is the first.

Later in this week, on Friday and Saturday, we shall hold a hearing in Phoenix and in the near future will hold similar hearings in locations which have large Indian populations. That series will include one early next year on issues of concern on the Navajo Reservation.

This hearing is being held under the authority of the Civil Rights Act of 1957, as amended. As required by law, notice of this hearing was published in the *Federal Register* on Friday, October 13, 1972. A copy of this notice has been introduced into the record as Exhibit No. 1.

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1. To investigate sworn allegations that citizens are being deprived of their right to vote by reason of their race, color, religion, or national origin;
2. To study and collect information regarding legal developments which constitute a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin;
3. To appraise Federal laws and policies with respect to the equal protection of the laws because of race, color, religion, sex, or national origin;
4. To serve as a national clearinghouse for information with respect to denials of equal protection of the laws because of race, color, religion, sex, or national origin.

I should, as an aside, call your attention to the fact that discrimination by virtue of sex is a relatively new area of responsibility for the Commission, having been assigned to it by the Congress at the session this year.

Under the law, the Commission is required to submit reports to the President and the Congress which contain its findings and recommendations for corrective legislation or executive action. To enable the Commission to fulfill its duties, the Congress has empowered the Commission to hold hearings and issue subpoenas for the attendance of witnesses and the production of documents. In order to produce as credible a record as possible, the Commission is authorized to take testimony under oath.

We have just concluded an executive session in accordance with the statute governing Commission hearings which provides for such a session, closed to the public, during which persons who may be defamed, degraded, or incriminated by testimony given at the public sessions will also have an opportunity to be heard.

A period has also been set aside during the course of these 2 days of hearings to give time to persons who have not been subpoenaed but who feel they have relevant testimony which the Commission should hear.

The executive session was the only session closed to the public. At all other sessions the public is cordially invited to attend as observers.

I can best explain the functions and limitations of this Commission by quoting from a decision of the United States Supreme Court early in the Commission's history. This is the quotation:

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In carrying out its legislative mandate, the Commission has made detailed studies in the fields of administration of justice, education, employment, health services, housing, and voting. To augment its studies in these fields it has held hearings in representative communities throughout the country.

We have come to Albuquerque here in New Mexico as part of the Commission's project of investigating the civil rights status of reservation and nonreservation Indians. The Commission is deeply disturbed by the fact that, of any identifiable ethnic group of American citizens, the Indians have one of the highest unemployment rates, the lowest per capita income,

that their infant mortality rates are higher and their life expectancy lower than the rest of the United States population. Due in great part to the fact that they have been deprived of adequate schooling, they generally are relegated to the lowest rungs of the job ladder with almost no chance for upward mobility.

Thus, we come here to Albuquerque, New Mexico, a city and State which are home to many Indian tribes, to ascertain the nature and extent of these problems and, hopefully, to arrive at a means of rectifying them. As I have said, from here we shall go to other communities on the same quest.

I would like to emphasize that a Commission hearing is not an attempt to embarrass any State, city, or individual but will, instead, explore problems that are representative of civil rights problems. The Commission's history shows that it has always been scrupulously honest and fair in its presentations even though the subject matter may be intrinsically emotional. The same objectivity will prevail at this hearing.

Federal law protects all witnesses subpoenaed to appear before the Commission.

At this point, I should like to explain that Commission procedures require the presence of Federal marshals at its hearings. Although the Commission and the marshals know that the majority of citizens would not wish to impede the orderly process of this hearing, the marshals have determined that the security measures they have instituted will help to provide an atmosphere of dignity and decorum in which our proceedings can be held. I should like to add, by the way, that this podium from which the witnesses and the clerks and the Commissioners and staff work is off limits to anyone but authorized personnel, and it is recommended that meetings with the Commissioners and others which are desired be held outside of this room.

We will hear from representatives of the Federal, State, and local governments, tribal governments, members of the private sector, and individual citizens. We shall examine each phase of the socioeconomic structure as it affects American Indians, recognizing that this ethnic group represents diverse histories, cultures, and social institutions. We shall also give careful consideration to the question of Indian control of Indian institutions and of programs serving Indian communities.

This morning's public session will recess for lunch between 1:00 p.m. and 2:00 p.m., and we may have a mid-morning recess, but I think that we will decide that by the time it takes

for us to hear witnesses who have been scheduled this morning.

Today's session will recess at 7:30 p.m. Tomorrow's session will begin at 9:00 in the morning with a lunch recess scheduled from 12:30 p.m. to 1:30 p.m. The time between 5:30 p.m. and 7:00 p.m. tomorrow evening has been set aside for unscheduled testimony, and this hearing will conclude at 7:30 o'clock Wednesday evening.

Now I should like to ask Commissioner Rankin to read the rules of the hearing. Commissioner Rankin.

COMMISSIONER RANKIN. Thank you, Dr. Mitchell.

If any of you have difficulty following my reading, I hope you will not attribute it to the remnants of a Southern accent I might have. I had a unique experience last night. I came into Chicago early in the evening, and we circled Chicago in the soup until we ran out of gas. Then we went back to Pittsburgh. We stayed there about an hour or two. We came back in the morning and circled Chicago for about three or four more hours and finally just arrived here at daybreak in Albuquerque. So please forgive me if I am hard to follow in my reading, but here goes.

As the Commissioner has said, this hearing is divided into two parts. First, there was the executive session which was held earlier this morning. At the executive or closed session, individuals were invited to appear, if they so desired, and to state their objections to the public presentation of any testimony which they believed might be damaging to them. We are now beginning the public session which will continue through Wednesday evening.

At the outset I should emphasize that the observation I am about to make on the Commission's rules constitutes nothing more than brief summaries of the significant provisions. The rules themselves should be consulted for a fuller understanding. Staff members will be available to answer questions which arise during the course of the hearing.

In outlining the procedures which will govern the hearing, I think it is important to explain in some detail the differences between the public session and the executive session concluded earlier this morning. Section 102(e) of our statute provides, and I quote:

If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade or incriminate any person, it shall receive such evidence or testimony in executive session. The Commission shall afford any person defamed, degraded or incriminated by such evidence or testimony an

opportunity to appear and be heard in executive session, with a reasonable number of additional witnesses requested by him, before deciding to use such evidence or testimony.

Several weeks ago the Commission met in Washington and received the material which had been collected in preparation for this hearing. It was then determined that certain individuals were entitled to a hearing in executive session. Accordingly, these individuals were notified of their right to appear at this session. Each also was sent a copy of the Commission's rules which explained this right and was invited to communicate with the Commission in the event he wished to appear or had any questions concerning the executive procedure.

Although some of these persons have been subpoenaed by the Commission to appear during the public session of this hearing, none of them were subpoenaed to appear at the executive session. Several weeks ago they received notice of this executive session, an explanation of its purpose, and an invitation to appear if they so desired. They are not required by law to appear. The decision to appear or not to appear lies entirely with them. The executive session is for their benefit alone and, if they determine to forego this opportunity, that is their privilege.

In providing for an executive session, Congress clearly intended to give the fullest protection to individuals by affording them an opportunity to show why any testimony which might be damaging to them should not be presented in public. Congress wished to minimize damage to reputations as much as possible. Congress wished to provide persons an opportunity to rebut unfounded charges before they were well publicized. Obviously, this protection would be meaningless if the person were confronted with, and required to respond in public to, the anticipated allegations.

Following the presentation of the testimony in executive session and any statement in opposition to it, the Commissioners review the significance of the testimony and the merit of the opposition to it. In the event they find the testimony to be of insufficient credibility or the opposition to it to be of sufficient merit, they may refuse to hear certain witnesses even though they have been subpoenaed to testify in public session.

An executive session of this type is the only portion of the hearing which is not open to the public.

The public hearing which begins now is somewhat different. The public and the press are invited and urged to attend the open sessions.

All persons who are scheduled to appear who live or work in New Mexico have been subpoenaed by the Commission.

All testimony at the public sessions will be under oath and will be transcribed verbatim by the official reporter. Everyone who testifies, or submits data or evidence, is entitled to obtain a copy of the transcript on payment of costs. In addition, within 60 days after the close of the hearing, a person may ask to correct errors in the transcript of the hearing or his testimony. Such requests will be granted only to make the transcript conform to testimony as presented at the hearing.

All witnesses are entitled to be accompanied and advised by counsel. Counsel may subject his client to reasonable examination. He also may make objections on the record and argue briefly the basis for such objections.

If the Commission determines that any witness' testimony tends to defame, degrade, or incriminate any person, that person or his counsel may submit written questions which in the discretion of the Commission may be put to the witness.

Persons subpoenaed to the public session may request that witnesses be subpoenaed on their behalf. All requests for subpoenas must be in writing and must be supported by a showing of the general relevance and materiality of the evidence sought.

In addition, all witnesses have the right to submit statements prepared by themselves or others for inclusion in the record provided they are submitted within the time required by the rules. Any person who has not been subpoenaed may be permitted in the discretion of the Commission to submit a written statement at this public hearing. Such statement will be reviewed by the members of the Commission and made a part of the record.

Witnesses at Commission hearings are protected by the provisions of Title 18, U. S. Code, section 1505, which make it a crime to threaten, intimidate, or injure witnesses on account of their attendance at Government proceedings.

Copies of the rules which govern this hearing may be secured during any recess from a member of the Commission's staff. Persons who have been subpoenaed have already been given their copies.

Finally, I should point out that these rules were drafted with the intent of insuring that Commission hearings be conducted in a fair and impartial manner. In many cases the Commission has gone significantly beyond congressional requirements in providing safeguards for witnesses and other persons. We have

done this in the belief that useful facts can be developed best in an atmosphere of calm and objectivity. We hope that such an atmosphere will prevail at this hearing.

COMMISSIONER MITCHELL. Thank you, Commissioner Rankin.

I should like to tell you now what we are going to do. We are going to hear for half an hour overview statements from some representatives of the tribes and pueblo councils, and then we will start the hearing by interviewing witnesses who will speak to us about health services.

I should like to call first on the Honorable Benny Atencio, Chairman of the All Indian Pueblo Council.

I am sorry. I have overlooked introducing the Vice Chairman of the State Advisory Committee to the United States Commission on Civil Rights.

I should say that the Civil Rights Commission has State Advisory Committees in all of the States, that in some cases they hold hearings of their own, and in every case they provide invaluable assistance to the Commission in gaining information and in arriving at actions which the Commissioners take and the staff follows through on.

I would like to introduce first for a short statement Mr. Edward Yudin, who is Vice Chairman of the New Mexico State Committee.

Mr. Yudin, I am sorry for shooting right past you on the agenda. It is necessary, however, before you read your statement to swear you in.

[Whereupon, Mr. Edward Yudin was sworn by Commissioner Mitchell and testified as follows:]

**TESTIMONY OF MR. EDWARD YUDIN, VICE CHAIRMAN, NEW MEXICO
STATE ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL
RIGHTS**

MR. YUDIN. It is my pleasure as the Vice Chairman of the New Mexico State Committee to the United States Commission on Civil Rights to welcome to Albuquerque and to New Mexico two of our U.S. Commissioners, Dr. Rankin and Chancellor Mitchell.

Since the establishment of the U.S. Commission on Civil Rights in 1957, this is the first hearing held by the Commission in New Mexico, and this is also the first hearing held by the Commission exclusively on the question of Indian rights.

The State Advisory Committee is established by the Commission on Civil Rights pursuant to the Civil Rights Act of 1957, and as amended by the Civil Rights Act of 1964. The Chairman

of the State Advisory Committee is the Honorable Sterling Black. His predecessor was Justice Samuel Montoya. The Committee is made up of all ethnic groups and represents all of the cultures in New Mexico. The members range from Taos to Las Cruces.

It is the function of our State Advisory Committee to advise the Commission of any knowledge or information it has of any alleged deprivation in voting rights, of constitutional violations, of equal protection of the laws, to assist the Commission in matters in which the Commission shall request assistance, and to generally act as a factfinder for the U.S. Commission on Civil Rights.

Over the years, the State Advisory Committee has held hearings in Albuquerque, Santa Fe, Clovis, and Roswell. We have covered such subjects as discrimination in employment, housing, administration of justice, discrimination in private and public institutions, and discrimination in the field of education. We have assisted the Commission in gathering information relating to all of its subjects and in the publication of reports covering those subjects.

Our members have attended meetings in Dallas and Washington, D.C. We have referred specific matters involving discrimination to the Justice Department and to the Equal Employment Opportunity Commission. Our members have aided in the research of the Indian question leading up to this hearing today.

The members of the State Advisory Committee are proud to serve not only the U.S. Commission on Civil Rights but to serve all of the people in the State of New Mexico, and we hope in some small measure to contribute to the betterment of our State.

The meetings today and tomorrow will revolve around a few of the many problems facing the Indian population in New Mexico. We have in New Mexico approximately 73,000 American Indians as of the 1970 census, which is approximately 7 percent of our State's total population. Over 50 percent of the Indian population in New Mexico is concentrated in two counties, McKinley and San Juan.

Statistically, a very small percentage of the total Indian population live in urban areas, and these areas are Albuquerque, Farmington, Gallup, and Hobbs. The latest figures indicate that about 77,000 Indians live on or near reservations in New Mexico.

I believe some of the important statistics concerning Indians

are that the birth rate among the Indians is 38.5 live births for each 1,000 Indians. This rate is two times as high as the total population rate. Although American Indians have one of the highest birth rates of any minority group, life expectancy at birth for Indians is below that of the United States as a whole. In 1970 life expectancy for American Indians was 64 years, as compared to 70 years for the general population.

Educational figures indicate that there is a lower level of completion for American Indians than for Anglos, Spanish Americans, Asian Americans, or blacks.

Not only does the American Indian in New Mexico tend to have lower educational attainment levels than other population groups, but the average performance levels of Indian children attending public schools are often 2 or 3 years below those of white children.

The dropout rate for Indian students enrolled in the State public schools is very high compared to other population groups. For Indian pupils attending grades 9 through 12 in New Mexico, the dropout rate was almost 34 percent.

Indian children in New Mexico, like other minority groups, face special problems that tend to complicate their educational experience. In many instances they must encounter new concepts, values, and attitudes when they enter school. Many Indian children must learn English as a second language.

According to the 1960 census, more than three out of five rural Indian families received less than \$3,000 in yearly income. Family income below the \$1,000 level was three times as prevalent among the rural Indian population as among the total population.

Indians living on reservations in the State recorded even lower median family incomes. For example, Indian families living on the Acoma Reservation recorded a median income of \$2,500. Indians living on the Taos Reservation reported a median income of approximately \$1,900.

Indians in New Mexico generally live in worse housing than any other racial or ethnic group. Low income levels, as well as families of a large size, accentuate the problem. Housing data compiled by the Bureau of Indian Affairs indicates the poor and often deplorable housing conditions in which Indians live.

Of 6,000 housing units located on various reservations, over 50 percent were reported to be in substandard condition. Approximately 17 percent of the substandard homes need to be replaced, and the balance need extensive renovation. The Bureau of Indian Affairs has estimated that 2,337 Indian families living on reservations need new housing.

In 1970, according to a special tabulation by the Bureau of the Census, median family income for all population groups in New Mexico was reported to be \$7,849. For the American Indians, a special tabulation estimated the sum of \$4,500.

The health status of American Indians in the State of New Mexico is inferior to that of other population groups. As previously stated, birth rates for Indians are over two times higher than for the general United States population. In addition, while the percentage of Indian live births which occur in hospitals has increased substantially in the last 15 years, the number of hospital births for Indian families is still significantly lower than for the total population.

The infant death rate among Indians has declined considerably between 1955 and 1967. However, when compared to the general population, it is still generally high. The Indian Health Service reported that 14 percent of all the Indian deaths occurring in 1967 were infant deaths.

In recent years, over half of all Indian deaths have been attributed to five causes: accidents, diseases of the heart, malignant tumors, influenza, and pneumonia. A significant statistic is that for Indians living in New Mexico the suicide rate exceeds the national average. In fact, the Indian Health Service reports that suicide rates among the Indians are two times as high as the total United States rate.

The homicide rate among Indians is reported to be 3.3 times as high as the total United States rate. In New Mexico in 1967 homicides accounted for 1.8 percent of all the deaths among Indians. The national rate was only 0.6 percent in 1967.

Deaths from alcohol are 6.5 times as high among Indians as in the general population. In 1967 the Indian Health Service reported that cirrhosis of the liver accounted for 2.2 percent of all deaths. The national average was 1.4 percent.

American Indians in New Mexico live in a state of economic underdevelopment and deprivation. More than any other minority group, they suffer from high unemployment rates and very low wages. On many reservations nearly 50 percent of the Indian labor force is either unemployed or underemployed.

Indians are usually extended preference when reservation jobs are available. However, considering this situation, the rate of unemployment on most of the reservations in New Mexico is serious. Statistically, the Bureau of Indian Affairs has estimated that approximately 38 percent of the labor force are unemployed in contrast to the unemployment rate of 5.4 percent for New Mexico in 1971.

On behalf of the State Advisory Committee, I hope that

these hearings will be of great benefit to the Indians of our State and country. And, again, thank you very much for coming to New Mexico.

COMMISSIONER MITCHELL. Thank you.

And before you leave, I would like to tell you that I know I speak for the Commissioners and for the staff in expressing appreciation to you, Chairman Black, and the rest of this committee. It has indeed been invaluable to the Commissioners as we moved toward these hearings.

I know also what happens in terms of time and personal effort when one becomes a member of the State Advisory Committee, and in some cases reflected by tensions in one's own private life and business life. The Commission appreciates this and makes it a quite proper part of the record.

Mr. Yudin, thank you very much for establishing the framework for these discussions.

MR. YUDIN. Thank you.

COMMISSIONER MITCHELL. Now may I call on the Honorable Benny Atencio, Chairman of the All Indian Pueblo Council, and the Honorable Wendell Chino, President of the Mescalero Apache Tribe. I think perhaps, considering we don't have room for all three of the gentlemen, they can come forward one at a time.

So may we have first the Honorable Benny Atencio. I shall then call the Honorable Wendell Chino and the Honorable Hubert Velarde.

You are Benny Atencio, Chairman of the All Indian Pueblo Council?

MR. ATENCIO. Yes, sir.

[Whereupon, Mr. Benny Atencio was sworn by Commissioner Mitchell and testified as follows:]

TESTIMONY OF HONORABLE BENNY ATENCIO, CHAIRMAN, ALL INDIAN PUEBLO COUNCIL

MR. ATENCIO. Mr. Chairman, members of the Commission, I should just go ahead and endorse the statements presented by the State Advisory Committee and be hopeful that someone, somewhere will begin to believe the seriousness of these problems that we as Indians are facing.

I think they brought out many points which for many years agencies have been aware of, and I hope that the statements presented by the Advisory Committee will be an influence on those agencies responsible.

It is my pleasure to be able to share my thoughts with you today.

The Pueblo tribes welcome you to the land which has been their home for as long as man can remember. Our people lived and farmed around the rivers and streams which, in this country, are the source of life.

The All Indian Pueblo Council, of which I am chairman, represents approximately 35,000 people in 19 Pueblo tribes. Each tribe is autonomous in its government and culture. But we have joined together to work for those goals which can best be reached in a unified effort.

Our tribes, for the most part, are small and without substantial financial resources. Before the non-Indians came, we were blessed with resources which were sufficient for peaceful, happy lives. Though we still live on the lands of our forefathers, we are constantly threatened with the extinction of our culture. The changes which have occurred, particularly in this century, have forced us to make adjustments in our basic way of life. We recognize those values which have been passed down to us from our fathers and yet have adopted values which prevail in the majority culture.

Many of our people live in very poor conditions while the competitive society around us races on in the pursuit of wealth. We have attempted to develop, through our own initiative, programs which will help our people prepare themselves to be self-sustaining. Education and training are basic needs of our people. Health care is vital for us. Availability of jobs, as you have uncovered in your own research, is very discouraging for our people.

Even our trustee, the United States Government, does not seem to be concerned that Indian people have such a high unemployment rate. While the Federal Government talks about the need to put its citizens to work, it plans to cut funding for Indian programs by \$100 million.

While the Federal Government talks about aiding community problems, it passes a revenue sharing act which, in a practical sense, reduces programs which were developed to aid Indian people. While the Pueblo people express a desire to utilize the natural resources which they have, the Federal Government makes little effort even to help the Pueblo people start to use those resources.

The Indian people face serious problems with regard to taxation, law and order, and jurisdictional conflicts with State governments, and now with the enactment of the Indian Civil Rights Act of 1968 our tribal sovereignty is directly threatened.

President Nixon himself raised the issue that the United States is caught in an inherent conflict of interest. Institutional conflicts of interest as they relate to the Bureau of Indian Affairs, the Indian tribes, and the Department of the Interior have frustrated the Indian tribes, the Bureau of Indian Affairs, and now seemingly the President of the United States in attempting to keep the accent in Indian affairs on the Indians.

Even if there is no conflict of interest, the Federal Government as trustee often fails to protect our interests. It is no wonder that young Indian people, whether from the Pueblo tribes or other tribes, grow up disillusioned and angry. It is no wonder that Indian people become very frustrated when they are told that their programs have to wait until the majority culture decides that those programs have a higher priority.

We are a people who want to live with dignity. We know that in order to survive we must become self-sustaining, as we once were. In order to become self-sustaining, we will continue to initiate actions to help our people in education, employment, health, and the development of our valuable natural resources.

If your investigations can help us to achieve these goals, then we will be thankful. We ask to be heard openly and honestly, and I thank the Commission for this opportunity to express my views.

COMMISSIONER MITCHELL. Thank you, Chairman Atencio, for coming to us with that statement.

May I say, by the way, that at the recess which will follow these three overview statements—I shall declare a recess then—we will try to move that wall back so there will be some more seating available. The Commission is always very pleased when public interest in its activities produces a crowded room, but it has clearly underestimated the seating available.

Thank you, sir, for coming to see us this morning.

Now I would like to introduce to you the Honorable Wendell Chino, who is President of the Mescalero Apache Tribe.

[Whereupon, Mr. Wendell Chino was sworn by Commissioner Mitchell and testified as follows:]

COMMISSIONER MITCHELL. Thank you. Please be seated and proceed.

**TESTIMONY OF HONORABLE WENDELL CHINO, PRESIDENT,
MESCALERO APACHE TRIBE**

MR. CHINO. Mr. Chairman and members of the Commission, indeed it is a privilege for me to appear before the Commission

to make some brief remarks concerning the Mescalero Apache people.

In light of what some of my predecessors here on the witness stand have already said, I hope that the hearings today and tomorrow will not be just another rhetoric session putting Indians on the stand to hear about their problems and everyone just goes away without ever resolving to find some solutions to their problems.

Because all of these problems that we mentioned, whether they be to the State or the Federal Government, we as Indian leaders are intimately acquainted with the dire needs of our people. We intend to and we are interested in finding solutions to these problems. But in many areas we not only need the expertise, but we need much more than that—the financial considerations to see that programs necessary to solve these problems are henceforth coming from Federal agencies with which to do the job.

The Mescalero Apache Reservation is located in the south central part of New Mexico. Our population numbers about 2,000. From the standpoint of priorities, I suppose we would consider that the need for housing is very important because we feel that housing is important to the basic social unit we refer to as a family; that unless the family is properly housed it is pretty difficult to try to paint rosy pictures for your people as to what you want to pursue or what you hope to achieve. And it is also very important, perhaps more important, for the children. Because if they are coming from homes that are inadequate, if they are improperly heated, perhaps in some cases with no running water, these children, I am sure, suffer from many social and psychological problems that would impede their educational programs. For these and many other reasons, the need for housing, I think, is very important to the Mescalero Apache people.

And then the second matter that we consider very important is the matter of providing an adequate educational program for all of our children, beginning with the kindergarden, through high school, and on into the higher educational programs. I am very sorry that the Indian people across the country, and the Mescalero being a part of that Indian community, often are faced with—particularly funds for students who are interested in higher education—faced with no money with which to pursue an educational program. We hope that this Commission would take a very serious look and see that adequate funding for educational programs is provided for our people.

Another matter that is quite important is the matter of health. And, since some of my colleagues will have the opportunity to remark about the health program, I would not elaborate on it too much except to say that, come June 30, when young doctors will no longer be subject to the draft and have the opportunity to decide or to choose what Indian people they may serve, that the Indian people who are now being provided with doctors from the service will continue to be, beginning July 1, 1973. We hope that this Commission would also provide, and study with us, some alternatives so that the Indian community may continue to receive the services of the various doctors throughout the country.

The fourth matter that I would like to mention is the matter of resource protection and resource development. Many, many times we talk about the unemployment as it exists in the Indian community, but we never get down to the basic fact that sometimes the Indian community really has nothing to develop. But for those who have limited resources to develop, again they are quite often confronted with the fact that really there aren't enough program funds with which to do the job.

Be that as it may, whether our land base and our land resources offer little or much, I think that a great deal needs to be done to protect the diminishing land base of our Indian people because many of our resources are subject to a great deal of erosion and inadequate fire protection. So that, instead of maintaining our lands in the condition that they should be maintained, the conditions are very severe.

Therefore, we request that the Congress take into consideration the erosion control measures, forestry control measures, grazing land control measures which are a very important foundation for all of our Indian community. And then along with it, we need here again adequate funding with which to do the job.

In fact, I suppose in every area of the need for development in the Indian community, if we ever hope to accelerate and bring those Indian tribes that do want to develop, we need a great deal of funding with a great deal of acceleration to overcome some of the problems that are being mentioned here today.

So I represent a group of people numbering 2,000 having a land base of 460,000 acres. Like all of the Indian groups, we are trying to do the best we can to protect our land, to protect our forests, to do a good job with the 6,000 head of cattle we operate. We want to do a good job with the Sierra Blanca ski area which we own and operate. We are on the threshold of

developing a major terminal tourist complex. We hope that all of these developments in which we are engaged, upon their completion, will contribute to the continued social and economic development of the Mescalero Apache people.

In closing, I would like to submit for the record a paper entitled "Should the Criminal Justice System Be Different for Indians?" In this paper I present some of my views concerning this matter in light of the Civil Rights Act.

Thank you very much.

COMMISSIONER MITCHELL. Thank you, President Chino.

The clerk will pick up your paper, and it is ordered into the record.

[Whereupon, the document referred to was marked as Exhibit No. 2 and received in evidence.]

COMMISSIONER MITCHELL. I do want to thank you for your statement. Let me assure you that it is not the habit of the United States Commission on Civil Rights to hold hearings and then go off and forget these problems. I think the comments you made were pertinent and will greatly help us in reaching our conclusions.

Thank you again.

Now may we hear from the Honorable Hubert Velarde who is President of the Jicarilla Apache Tribe.

Mr. President, would you kindly state your name and the name of your tribe?

MR. VELARDE. My name is Hubert Velarde, and the name of my tribe is Jicarilla Apaches.

COMMISSIONER MITCHELL. Thank you.

[Whereupon, Mr. Hubert Velarde was sworn by Commissioner Mitchell and testified as follows:]

**TESTIMONY OF HONORABLE HUBERT VELARDE, PRESIDENT,
JICARILLA APACHE TRIBE**

COMMISSIONER MITCHELL. Thank you very much. You may proceed.

MR. VELARDE. Mr. Chairman, members of the Commission, we are pleased to take part in these proceedings being held here in Albuquerque today and tomorrow. We believe such hearings are long overdue, as the Indian minority, as an ethnic group, has long been ignored in matters that fall within the jurisdiction of your Commission.

Perhaps if we had had an opportunity such as this in the past to air our grievances, the unfortunate events which took place in Washington earlier this month involving some of our Indian brothers could have been avoided. It ill behooves this

great country of ours to force us, the legitimate Americans, to have to resort to such means to attract the attention of our Nation's leaders, as well as the American people. Hopefully, through aggressive discussion, we can resolve some of these problems without having to endorse or encourage such unfortunate events.

We of the Jicarilla Apache Tribe have been blessed with some of the most beautiful geography in the United States. Not only is it covered with virgin forests and blessed with untold numbers of deer, elk, and other wild animals, but it has been good to us in other ways. We have good forage for our cattle and our sheep and our resource income has provided us the means for a more substantial life style than many of the other Indian tribes.

However, these blessings also create disadvantages. We inhabit a very remote area in a very remote State. While we, as a people, largely enjoy this, it also can create problems—problems of communication, problems of transportation, problems of recognition.

One such problem of recognition involves representation and employment with our State government and its agencies. For example, our reservation each year contributes very substantially to the fish and game income as well as tourist income of the State. Hundreds of hunters come into our reservation each year to hunt for trophy elk and deer, each buying a State hunting license and, in most cases, nonresident licenses. Yet we have never had representation, ex officio or otherwise, on the State Fish and Game Commission.

This is only one of many State agencies which are intricately involved in everyday Indian life but which are totally lacking in Indian representation. Such representation is long overdue and, for a State which capitalizes on its Indian population to the extent that this State does, is our due.

This is not to say that only our State government and State agencies have failed to give our problems due recognition. Only in recent years have we in Dulce had resident doctors, and, even more particularly, only now are these doctors beginning to understand us and our medical needs.

Another area where our Federal agencies have prejudiced our tribe by lack of aggressive representation is in the area of water resources. Some 2 or 3 years ago the Navajo Stream as it crosses the Jicarilla Reservation was a free-flowing stream of a magnitude that clearly would provide for the water needs for our townsite of Dulce, for our irrigation needs, and for an active fishing enterprise. However, 2 years ago the diversion

gates were closed on the Navajo, and now what once was an active stream, playing a large role in our everyday lives, has become a mere trickle. The fish have died, and the water supply for our community is threatened. There is no water left for irrigation.

We learn that legislation was passed by the Congress of the United States some 10 or 12 years ago which authorized this transmountain diversion of our water from our stream into the Rio Grande. We understand that the Department of the Interior, as well as the Bureau of Indian Affairs, had an active role in this legislation. But never once were we asked to identify our needs for water from the Navajo Stream. Never once were we asked to testify to what our interests in this water were and are.

Only at this late date, after the proverbial horse has been stolen, are we being funded for a water inventory. And, even then, are we going to be forced to again go on the attack to protect what is rightfully ours?

Another area where it appears to us our Federal agencies have ignored our problems is that of law enforcement. It is a matter of law that at the present time our tribal courts do not have jurisdiction over non-Indians when offenses are committed within the reservation boundaries. Also, in many cases, there is a lack of jurisdiction in the State courts.

Should a non-Indian appear to violate standards of good conduct on the reservation for which our people would be punished, we are unable to obtain Federal prosecution for such offenses in the magistrate courts. For example, should a non-Indian appear to be drunk and disorderly on the reservation, we have no jurisdiction to prosecute that person in our tribal court. The magistrate courts of the State refuse to take jurisdiction, and the Federal courts appear to be disinterested in assisting us to enforce our laws.

Under these circumstances, the tribe has become powerless to enforce standards of good conduct which are imposed upon our Indian people but which may be ignored by our non-Indian visitors. Such inability is difficult to explain to our Indian people and difficult for us to understand. We believe, under the modern-day tribal system of government on our reservation, Congress should confer jurisdiction in our tribal courts to prosecute and punish when necessary those persons who are guilty of misdemeanors within the reservation boundaries.

There is another area where I feel our people have suffered indignities of person as well as pocketbook. A careful inquiry will show that in the administration of justice in Rio Arriba

County, and particularly in the courts of limited jurisdiction, the Indian citizen is treated, at best, as a second-class citizen. The records are replete with instances where members of our tribe have been charged with minor offenses, traffic or otherwise, and following summary court proceedings, without opportunity for adequate defense, have had maximum punishments imposed. This is the case when the person is a first offender.

Others living in the same community, who are non-Indian, for the same offense have their wrists slapped and go merrily on their way. There is little doubt but what the jealousies of us in our community have caused these indignities to be heaped upon us, and we must suffer without recourse. I would hope this Commission would make an analysis of this problem which is inherent in Rio Arriba County.

These jealousies I have referred to also pervade the attitude of the non-Indians within our community school district. Many years ago the Dulce community integrated into the public school system of the State of New Mexico. Through Federal funds made available by the Office of Education of the Department of Health, Education, and Welfare, a public school was built for the use of Indian children as well as the adjacent non-Indian community.

Since that time, the facilities have become inadequate, and for at least the last 6 or 7 years both the State and local school officials identified a crying need for a new high school. This is needed not only to provide adequate space because of increased enrollment but to provide the facilities needed to update teaching and learning skills.

Bond issues have been passed to supplement the Federal funds made available; but, because of the jealousies pervading the abutting non-Indian communities, exhaustive court tests have been initiated. Every effort to implement the needed construction has been thwarted. The result has been that our children as well as all other children within the school system have suffered.

Though we have sought to encourage close cooperation in making available the necessary tools to provide for the best education for the children attending the school, we have not received any cooperation whatsoever from these neighboring communities.

I look forward to the next 2 days of hearings and trust that I will have something to contribute to the hearings as the hearings progress. I know that we will learn much from the Indian witnesses who are appearing, and I have confidence that this Commission will lend every resource to aid us in

overcoming these problems which to us have almost become a way of life.

I thank you for the opportunity to talk to you this morning. And to paraphrase one of our sayings, "Once you have walked a mile in our moccasins I am sure you will better understand and better appreciate our problems."

Thank you.

COMMISSIONER MITCHELL. Thank you, President Velarde. My apologies to the members of the Jicarilla Tribe for not having pronounced their name properly. I think you have made a very valuable and useful statement. I am glad to learn you will be with us for the next 2 days and hope that you will feel free, perhaps in the open session, to give us your view of what we have heard in the course of taking testimony.

Now I declare this session to be in recess for 15 minutes, and we will resume our hearings, which are already behind schedule, at 20 minutes after 11.

[Whereupon, a recess was taken.]

COMMISSIONER MITCHELL. Will the Commission come to order?

We are now back in session, and we shall hear from three people who will talk to us about Indian health care.

At this stage we will be hearing evidence, witnesses' statements, and the Commission and its staff will be engaging in cross examination and in asking questions.

I should like to call to the stand Jose Toledo, Amerante Silva, and Paul Bernal.

Gentlemen, would you please let me swear you in? Would you state your name first?

MR. TOLEDO. My name is Jose Rey Toledo.

MR. SILVA. My name is Amerante Silva.

MR. BERNAL. My name is Paul J. Bernal.

[Whereupon, Messrs. Jose Rey Toledo, Amerante Silva, and Paul J. Bernal were sworn by Commissioner Mitchell and testified as follows:]

TESTIMONY OF MR. JOSE REY TOLEDO, HEALTH EDUCATOR, INDIAN HEALTH SERVICE; MR. AMERANTE SILVA, ADMINISTRATIVE COORDINATOR, ALL INDIAN PUEBLO COUNCIL; AND MR. PAUL J. BERNAL, TAOS PUEBLO COUNCIL SECRETARY, CHAIRMAN OF ALBUQUERQUE AREA PUBLIC HEALTH SERVICE ADVISORY BOARD, AND CHAIRMAN OF ALL INDIAN PUEBLO COUNCIL HEALTH COMMITTEE

COMMISSIONER MITCHELL. Would you please be seated? Beginning with Mr. Toledo, would you tell the clerk your

name and your occupation, and then Mr. Silva and Mr. Bernal, so that we have this for the record?

MR. TOLEDO. My name is Jose Rey Toledo, and at present my title is health educator for the Indian Health Service.

COMMISSIONER MITCHELL. And Mr. Silva?

MR. SILVA. My name is Amerante Silva. I am with the All Indian Pueblo Council, administrative coordinator.

COMMISSIONER MITCHELL. Mr. Bernal?

MR. BERNAL. My name is Paul J. Bernal. I am the Taos Pueblo Council Secretary, and I have a responsibility to represent the All Indian Pueblo Council Health Committee as the chairman, and also I am the chairman for the Albuquerque Health Advisory Board of the Public Health Service.

COMMISSIONER MITCHELL. Gentlemen, we welcome you all to the Commission.

Mr. Powell.

MR. POWELL. Mr. Toledo and Mr. Silva, you didn't indicate your tribal affiliation. Would you tell us your tribal affiliation, please?

MR. TOLEDO. My home is at Jemez Pueblo, New Mexico.

MR. SILVA. I am from Santa Clara Pueblo.

MR. POWELL. Thank you.

Mr. Toledo, please briefly describe your educational background and work experience.

MR. TOLEDO. Well, after high school I entered the University of New Mexico as a fine arts student and transferred over to art education and received my B.A. in art education in 1951. And then I received my master's of art in art education in 1955. And just the past year I have been at the University of California School of Public Health in Berkeley and completed my requirements for a master's in public health, in health administration and comprehensive health planning.

MR. POWELL. What about your work experience?

MR. TOLEDO. Well, I have been everything really—a farmer, a school teacher, an arc welder, a father, principally.

MR. POWELL. You have had some experience in the health field, have you not?

MR. TOLEDO. Oh, yes. I have worked with the U.S. Public Health Service for 15 years, and prior to that I worked for the Bureau of Indian Affairs as an arts and crafts teacher, accumulating for the Federal Government a total of 24 years.

MR. POWELL. Mr. Silva, would you elaborate on your responsibilities with the All Indian Pueblo Council?

MR. SILVA. Well, as a member of the All Indian Pueblo Council, as administrator and health coordinator, my duties

are similar to a troubleshooter, you might say, receiving complaints coming in from the various tribes and bringing the problems before the Public Health Service—where remedies are brought in to solve the problems either communicationwise or otherwise.

MR. POWELL. Mr. Bernal, could you describe briefly your position and responsibilities in the area of health services?

MR. BERNAL. Yes, sir. I have been involved with the United States Public Health Service—not an employee and I do not receive any compensation from this agency—but I have represented the interests of the All Indian Pueblo Council in health, and also I am responsible to advise with my coworkers, the area advisory board members, advising them how to improve the service; to improve the service and to do it in a way of advising them to get better facilities for the Indian health program to benefit our Indians; to do a special kind of health delivery, health care service for Indian people.

MR. POWELL. Mr. Toledo, you are with the field health service component. For which tribes do you have responsibility?

MR. TOLEDO. At present I am assigned to nine pueblos plus two satellite Navajo reservations. And the pueblos are Jemez, Zia, Santa Ana, Sandia, Isleta, Acoma, Laguna, and the satellite reservations for the Navajo Tribe are Canoncito and Portocito or Alamo.

MR. POWELL. Mr. Toledo, our inquiries into the questions of Indian health problems indicate there are cultural differences between Indians and non-Indians which may tend to create barriers. Would you care to comment on that and explain it?

MR. TOLEDO. Well, I have a prepared presentation, and I don't know how I would cut in on that right now.

MR. POWELL. Why don't you begin briefly to describe those problems, if you will.

COMMISSIONER MITCHELL. Just a minute. Mr. Toledo, do you mean you have a statement you would like to have in the record?

MR. TOLEDO. Yes, I have a presentation about as lengthy as the others, and I wouldn't know where to cut in.

MR. POWELL. Could you briefly summarize that statement?

MR. TOLEDO. Will you phrase the question again?

MR. POWELL. Could you briefly summarize your statement regarding cultural differences between Indians and non-Indians and how those differences—

COMMISSIONER MITCHELL. Well, no, just a minute now. I think what Mr. Toledo is saying is that he has a written

statement that is about as long as those we have heard from prior witnesses and he would like to read that into the record. Perhaps we should deal with that question right now. It may very well be at this point in these hearings that we should have that statement read into the record.

MR. POWELL. If you desire, you could either have it submitted for the record and give a brief summary or read it for the record.

COMMISSIONER MITCHELL. If you submit it for the record, then we could continue to ask you questions, some of which may be in your written testimony and therefore which would be redundant. But if you would prefer—I have to respect Mr. Toledo. He holds his master's degrees, among other places, in public health; and I think we have an expert witness here, and it would seem to me to be a shame not to get the benefit of his testimony. So I, with Mr. Rankin's permission and concurrence, invite Mr. Toledo to read that statement so that everyone here may hear it and we may hear it and then proceed. Even though I think it may delay us a few moments, I think it is well worth it.

Would you read that statement for us, please?

MR. TOLEDO. Thank you.

The title of my talk is "Medical Practice as It Exists for the Indian People Nationwide, Including Alaska, and the Attitude of the Recipients toward the Delivery of Medical Services and Care by the Purveyors."

In my presentation I am going to keep the whole Indian population in mind, which numbers approximately 700,000 Native Americans. I am not just going to talk about the Pueblo area. It is too narrow.

I am going to talk about medical health experience related to my work in dealing with people and presented in a broader spectrum. This is a hard task to put across without causing a lopsided effect which may be too much for the white man and too much for the Indian. I shall specifically point at the quality of health services delivered up to this point and may include a little historical background of both.

I feel honored indeed to be subpoenaed to talk about subjects pertaining to the general welfare and matters affecting the health of the American Indians. I am not representing any official group. I am not representing Indian authorities. I am not representing Public Health Service authorities. I am only speaking as a person who has been exposed to attitudes and ways of people toward health care and situations that affect their feelings and performance.

Medical practice of good quality is very important. It looks toward recovery from misery and pain. It looks toward recovery from suffering. And there is a vast difference between modes of practice.

On the one hand, there is the scientific approach that employs the use of refined and compounded drugs, complex diagnoses through the use of highly technical instruments, and surgery, to name a few, as practiced by modern doctors with varying skills. On the other hand, there are approaches used by developing people. And no doubt both have run through the same early experimental route. Modern medicine and modern medical practice is where it is now as a result of many successful and unsuccessful experiments. Modern science deals with improvement. In the process both employ drugs, painkillers; and, needless to say, we are enjoying and reaping the benefits due to a countless number of people who have sacrificed their lives so that this could be realized.

In my humble way, I shall present my views.

Administrators of Indian health programs are worried because the areas of complaint are too numerous and are sometimes too overbearing in nature. We all must recognize the fact that medical practitioners are individuals with different moods and ambitions. They view the medical field in the light of their own interest, focused toward the expansion of their intellect. The object of every doctor, I am sure, is to improve his own knowledge and, by doing so, sequentially improve the condition of the patients that he serves.

At no time in history has medical service been so expanded, has been so inclusive for the American Indian as it has been in the past 15 years since transfer of health services was made from the Bureau of Indian Affairs to the Public Health Service. The team approach in the use of sanitarians and environmental scientists, nurses, doctors and health educators, nutritionists, dentists, psychologists and psychiatrists—all those are very important, and each discipline will go through a period of growing pains in the process.

The general population is also concerned about the high cost of medical care. It believes in the doctor or the physician as meriting a high social status, and as a result, oftentimes, the doctor lives in a glass house. He is visible from any direction that you can view him. And since it is a glass house, it is so easy to hurl obstacles in his direction.

Originally in the general society the religious person, such as a preacher or a priest, was viewed as someone possessing very high moral standards in life. I think the doctor is taking

precedence now in his view as someone special, perhaps not as much as he was 15 years ago. The younger generation, however, is a bold, critical generation. They don't beat around the bush to point at the mistakes, and at the same time they do not want to adhere to the established principles that have been invoked.

And some of the younger physicians even endanger themselves by putting away some of their original principles of conduct, principles of good medical practice, even to the point of keeping themselves unclean when they handle patients. I know an instance involving a doctor who, in spite of many warnings from a nurse, became infected as a result of this malpractice.

These are some of the infractions that have been committed by physicians in the Indian Health Service. I don't know if that is generally true in the private medical practice.

Now let us go into the historical setting of the recipients of the health services—the American Indians.

Most generally, some Indians have not had the appreciation nor have they realized the breadth and scope of progress made by modern medical science. But I have yet to see an Indian who is not awed by the demonstrated skill at surgery or evidence of rapid recovery from dangerous illness.

There are many capable doctors who are not white men, and they have the know-how. Indians will not hesitate to go to one for complex situations that involve long-term illness or serious illness—such as a bad gall bladder, bad kidney, bad lungs, or upper respiratory disease—that may require surgery. They will not hesitate to take that final step.

But oftentimes they will finally decide when the disease has been prolonged or has become a terminal case, and often the Indian people become disappointed because the medicine or the practice has failed in their estimation, and they will build up antagonism without looking into the situation on the broader perspective—the Indian area people who have given the confidence of the shamans or the curanderos, as the Spanish people call them.

There are several types of healers within the Indian population. There are those that practice the administration of poultices, the feeling of the body, and applying heat to the areas that they feel are affected by cold weather, the elements of nature, bad winds, severe winds.

Illness is a sign of being out of kilter or being out of harmony with nature, and the degree of this mis-step or the degree of divergence is usually gauged by the way a person feels. And

sometimes pains can be tolerated for prolonged periods of time by a patient. Only when he gets to where the pain is a constant source of irritation and gets in the way of his performance will he begin to tell others.

Usually he will begin to diagnose himself and will administer his own self-imposed knowledge of what he considers primary health care. After consulting with his immediate family, and later with his extended family group, it will become a community concern.

Then everybody takes on the aspect of the patient. All want to share the illness, and they will share it in several ways—either by direct help through the sharing of feelings or seeking an immediate practitioner, and later on may seek those involving curing with religion and psychiatry.

Psychiatry as known to the Indian people consists of healing the mind and the total body. Mental conflict entails being out of harmony with the immediate family relationships, and those are taken care of. It also involves, at times, the government of the community, even those who administer order, after a combination of advice geared toward right living, and in some cases harmony will be restored and the patient will be on his way to recovery.

But there are many things today that perplex even the best of medicine men, even the best of religious leaders; and, more serious, the complex confusions result from our amalgamation with the Caucasian, outside forces and their way of life, their life styles, and their system of values.

General society believes in education, something technical. It is usually something removed from the everyday experience of the Indian, something that will require manipulation of skills and oftentimes that will improve his economic lot and will require his going to another area, perhaps a metropolis, perhaps many miles away, and oftentimes the family will be shifted. The families will be separated and all these cause altered feelings.

Everybody wants to keep pace with modern society. You can just tell that by going to the Indian homes where different values are now being established. Different values are being introduced.

Some say to have a television set is a gesture of some form of wealth, or to have a motor vehicle is another gesture of wealth, and to have modern appliances is also another value that is looked upon as having wealth. And to even speak another language that is foreign to the Indians, such as English,

Spanish, French, or other, is considered a leaning toward being different.

So all these are perplexing and confusing.

Children have no time to listen to the older generation, and this alone creates disharmony. It results in confusion and in bad feelings in some instances.

Whereas, on the other hand, the general society also has values that they cannot cope with, either. High taxes, for example. The effort to belong, to keep up with the Joneses, is another area. The general society feels it is necessary in order to meet the approval of people surrounding them. They are not satisfied with one car. They must have others. Youngsters are demanding things that even middle class people cannot afford readily for them. All kinds of fads come into play.

So I don't think either group is content with conditions as they are. But the question is: Are we griping about the quality of medical care? Perhaps we have ideal situations in mind that we think might improve the lot. If the Indian people have such desires, are they complaining justifiably? Are they doing things in a manner that will result in immediate improvement?

I would say no. Most often complaints are varied, and complaints are made in such a way that feelings are hurt, and there is no base that shows evidence of sound planning. In many instances there might be a basis for misunderstandings. But sometimes just interpretations of misunderstandings do not result in immediate solutions to health problems.

I would say that instead of approaching the solution to certain health problems—probably at the administrative level or at the use of money level or use of manpower or use of institutions, the use of medical contracts, and all that— Instead of attacking individuals who are there to give service, I think the whole process should be tackled as it is geared to the system, the system that provides all this, and leave people out for a little while, but just criticize the total system first. I think that would be one way to develop an in-depth inspection into the whole situation.

I think that the total health program that the Indians are now receiving is very narrow in scope. I think that the Indian Service, Public Health Service, is not the only provider that is available. I think the United States Government armed forces with all their hundreds of trained personnel, topnotch equipment that could be used readily, is laying idle, and is not being incorporated. Even county and State facilities and all their services are not being used by the Indian people.

The Indian people should plan health programs that will

incorporate every available health service within their grasp and make for a more efficient cross-delivery of adequate health services, for now it is still in its primitive stage for such a highly technical society as we live in today.

The Indian people are not the only ones that are deprived. There are the Spanish Americans and pioneering Anglo families that live out in the outskirts, rural areas; other races that have no availability to immediate health facilities and health services.

I personally think that the delivery of health services by agencies should be delved into and not necessarily spin our wheels with only one agency which we have as providers, and that is Public Health Service, Indian Health Service. This is the way I see it.

Health education should not be limited to the department or discipline known to be responsible for this. I think health education should run through the whole gamut of health delivery from the physician down to the custodian in the health service.

It is very appalling to be presenting problems or trying to recommend solutions, and it is unbelievable that we still as Indian people live in a dual-administered government society; and we are talking about civil rights, and we seem to hear more people say: "Well, you are citizens of the United States. You Indians are citizens just like the rest of us. You are subjected to the laws of the United States. You are giving your lives on foreign soil for the protection of 'democracy.' "

It's unbelievable as Americans to reflect on situations today, where we are still trying to figure out ways and isolating people or races and isolating services in the society, and from a government that seems to confuse the people more than they are helping them, by simply not following through a procedure that creates or makes for unity, a unity of effort.

I have often felt that health problems can't be examined in a vacuum. They are related to many things, including unemployment, lack of vocational skills, inadequate education, cultural conflicts.

Many people are content to say, for example, that alcoholism is a problem without adequate recognition that this is a mental health problem which is manifested in other ways in forms of suicides, homicides, vandalism, and other deviant behavior as well.

Most doctors in the Health Service would probably name iron deficiency anemia among women of child bearing age, obesity, gastrointestinal and upper respiratory diseases, and

the still too high infant mortality rate as major health problems on the reservation. This tends to overlook the real problems which stem from lack of nutrition and opportunity for adequate body growth, insufficient education in prenatal care and delivery.

There is, for example, a great deal of sickness from ear infections and colds which are caused perhaps by inadequate diets. This dietary inadequacy affects both Indians who can't afford balanced diets as well as those who can but because of inadequate information do not know how to prepare balanced meals.

The Indian Health Service, State and county agencies, and Indian governments should encourage the organizing of health disciplines within the Indian groups and emphasize adequate health programs and programming instead of merely giving lip service to the concept.

The Indian governments are at fault also in the following areas. They are too narrow in their administrative views. They are too oriented in gossip. I think some of the Indian administrators should be jailed for keeping Indians in unfruitful cultural shackles.

Many Indian administrators are not put into office because of popularity among their peers or among their constituents. They are put there because of cliques, and sometimes they stifle progress for their own people because of misinformation. They cause people to violate rules because of bad health, because they are sick, and I am talking about alcoholics and the mentally ill.

They cause them to be jailed, and they cause them to be fined highly in alien and local courts. They overlook school dropout rates. They overlook suicide, the mounting suicide rates. And they deal in nepotism now that OEO opportunities are here.

The Indian situation is not all good, and neither is it all bad. But it's bad enough. It has created jungles within our own communities, and many of the Indian people are not happy.

I want to work more closely with the All Indian Pueblo Council, popularly known as AIPC, not because I am really critical but I want to tell things as they are both to the Indian and non-Indian.

I would say also that there is sickness among the Indian people; it is true. Money and time are being spent to alleviate this sickness caused by virus and other more scientifically-designated agents. But I think that the more harm-producing agents, the agents that produce more harm, are bureaucrats

coming from your level, your peer group. Many people are designing laws that are tending to confuse both parties, Indians and non-Indians alike.

For example, there is a public health act that prohibits Indian people who are employed by civil service from participating directly with the Indian people to give them service that they desire so badly. This law is very discriminatory, and there are many lawmakers in Washington who are listening to people and are showing favoritism that tends to create disharmony rather than harmony. Moneyhounds and warmongers are ever getting a ready ear.

The issue of most concern to the Indian people, in terms of quality of health care, is one about the doctors who are going to tamper with their anatomy in the process of treatment. I feel that people are not happy with this aspect of health services, that they are not treated with dignity. For example, doctors in examining patients poke and check without saying anything to the patient as if they, the patients, were merely cogs in an assembly line.

There is, generally speaking, inadequate communication to Indian patients. This aspect of health care is neglected in formal medical training. The human being is too much a subject and not a person, and the medical students and doctors should be educated that a body has feelings as well.

Indian Health Service introduced sensitivity-type training to professional staff within the past 3 years, and more has been done this year than before. I feel the job in Albuquerque this year was good although I cannot assess whether, in fact, attitudes have changed.

At this point I would like to recommend a report by a Jemez Indian writer submitted to Dr. Donald Bedingfeld, medical director, who is in charge of the Field Health Service Unit, Public Health Service, and the report is entitled "Orientation to New and Established Medical Officers Assigned to the Pueblo Indian Reservation Areas on Traditional Pueblo Beliefs and Behavior." And that was submitted by this Jemez writer by the name of Mrs. Adelina Defender, training instructor, Southern Pueblos Agency, Division of Community Health Services, Bureau of Indian Affairs. At the pleasure of the Commission I would like to have her stand and be identified. Mrs. Defender.

COMMISSIONER MITCHELL. I will be happy to recognize Mrs. Defender, but may we have that report just for the record so that it may be included in the proceedings of this hearing?

MR. TOLEDO. I am almost through. Please give me more time.

COMMISSIONER MITCHELL. I'm talking about Mrs. Defender's report.

MR. TOLEDO. Okay.

COMMISSIONER MITCHELL. Thank you.

MR. TOLEDO. Certainly.

[Whereupon, the document referred to was marked as a Exhibit No. 3 and received in evidence.]

COMMISSIONER MITCHELL. Mrs. Defender, are you here?

Oh, here she is. Let the record show that she was recognized.

MR. TOLEDO. Some of the cultural barriers between medical people and Indians, as an example that might be pointed out, is the definition of a medical emergency. I once heard an Indian Health Service doctor tell a group of Indians at a meeting that an emergency is when a person is convulsing, is blue around the mouth, and is having a hard time breathing.

An Indian patient said to the doctor, "Doctor, that to us indicates that the man is dead."

Indians will say that a very sick white man looks like a dead Indian.

[Laughter.]

Indeed, there is no word for "medical emergency" in Indian terminology. Illness is illness. And when you're uncomfortable, you're sick. Indians feel when an illness is beyond the body's power of self-healing it is serious and treatment should be sought.

As a consequence of this divergence in attitude, Indian Health Service doctors and staff tend to be upset with Indians who seek treatment for what Indian Health Service people consider minor problems. To the patient, however, the problem is not minor.

The Indian people do not like hospitals and would not go to one unless they feel a problem is serious. I noted that the Sioux called a hospital the house of death and that the Sioux word for "doctor" is translated as "one who butchers."

Modern hospitals present to Indians unfamiliar situations and concepts. The antiseptic nature of a hospital is, according to my concept, not normal in an Indian experience.

A young doctor stressed personal hygiene to Indian patients. Yet Indians see doctors as slovenly with their long hair and beards and without, at times, professional clothes.

Health delivery problem areas for Indians are the inadequate diagnosis and unexplained prescriptions to patients, long waits at clinics, lack of prolonged hospitalization, failure

to utilize accustomed practices of healing arts such as poultices, feeling the patient, inadequate attention to proper application of bandages and other medical supplies, inadequate home visits, neglect of the elderly by not having nursing homes in the villages where invalids could care for themselves to some extent and have local Indian personnel do the rest.

Medical and ambulance assistance closer to the community—a problem which affects other races living in the area also; inadequate assistance in the areas of prenatal care and education, though there has been some improvement here in recent years; extension of dental services to cover more than just school age children.

I feel that personnel such as community health representatives, mental health coordinators, alcoholism counselors are not sufficiently accountable to the people they work to serve.

Thank you, members of the Commission.

COMMISSIONER MITCHELL. Thank you, Mr. Toledo.

I shall now ask Mr. Powell to continue his questioning.

MR. POWELL. Mr. Chairman, Mr. Toledo has more than covered the areas that I was going to inquire about. I think I will inquire of the other two witnesses now.

COMMISSIONER MITCHELL. Please do.

MR. POWELL. Mr. Silva, you mentioned that you are on the Indian Advisory Board. Which Indian Advisory Board is that again?

MR. SILVA. I am on the Santa Fe Service Unit Advisory Board.

MR. POWELL. I see. Is it your opinion that the members of this advisory board have an effective input on the policies of the Santa Fe Indian Hospital?

MR. SILVA. I believe it has because in cases when the board is all present, you know, and the need is requested of the physicians there, they readily take action as to the need of the Indian pueblos. So on the basis of that I don't believe that there is anywhere where the advisory board didn't have any input because recommendations are made by the board to the Public Health Service for the needs that action be taken on.

MR. POWELL. As a member of this advisory board and as health coordinator, I take it you do receive complaints from Indian patients. Is that correct?

MR. SILVA. I get complaints not only from patients but from the outlying tribes of the 19 pueblos, and some come indirectly and some come directly to attention in the office.

MR. POWELL. Would you tell us what kind of complaints you receive?

MR. SILVA. Well, mostly the complaints that we have had knowledge of are the waiting periods in the BCMC [Bernalillo County Medical Center] and other Indian health facilities because, in cases where they may have some burn as to the waiting period, especially in some of our Indian facilities where a sick person is ill, very sick, and has to sit for hours before attention is given them—that it seems like is one of the prime complaints.

MR. POWELL. I see. Do you also receive complaints about the adequacy of examinations?

MR. SILVA. Yes. Complaints have come to my attention in various means not only in this area but in other areas where examinations— A patient or a person is given a physical. They are merely seen and observed without any formality of going through the actual examining of the patient. Because in many cases, you know, the incidents that came to our attention, when the person comes to the hospital for a physical, the doctor sees a person but has no actual contact with the patient. All the question is: “Is this where you’re ailing?” or that, but no actual performance of a physical contact or physical examination is made which would have a bearing as to what remedies or what treatment can be given the patient.

MR. POWELL. Would you say that this might be an example of the cultural differences since Indians, when they are treated by their own medicine men, are touched and heat is placed upon them? When doctors just examine them orally do they feel they are not being adequately treated? Do you think to some extent it may be a lack of communication rather than—

MR. SILVA. Well, in some instances it may be lack of communication, lack of understanding, but the prime complaint is that, when they are sick and know they are sick, no physical check is made of the patient. Even in Indian ways the patient is examined so they know that they have been through the examination process of Indian source.

MR. POWELL. You mentioned BCMC. I take it that the BCMC performs medical service to Indians under contract with the Indian Health Service. Is that correct?

MR. SILVA. Yes, the Public Health, Indian Health Service, has a contract with BCMC for emergency purposes and other referrals that is referred by the Indian Health Service to BCMC.

MR. POWELL. Are there problems with respect to eligibility for care at BCMC?

MR. SILVA. Yes.

MR. POWELL. Would you describe those problems?

MR. SILVA. Well, the recent incident that I received a complaint is of one case of an Indian girl not being of the Pueblos and was refused treatment or care. The individual was told that since the contract stipulates Pueblos that she was not eligible for treatment under their contractual provisions.

MR. POWELL. She was not a Pueblo Indian—this girl?

MR. SILVA. Yes.

MR. POWELL. She was a Pueblo Indian?

MR. SILVA. No, she was not a Pueblo Indian.

MR. POWELL. But she was an Indian?

MR. SILVA. She was an Indian.

MR. POWELL. Of what tribe?

MR. SILVA. She was a Choctaw from Oklahoma.

MR. POWELL. I see. Don't Indians from tribes outside the area get emergency treatment also?

MR. SILVA. Emergency treatments, yes. Provisions are stipulated, I'm sure, in the contract that in emergencies we'll take care of any Indian.

MR. POWELL. With respect to Pueblo Indians coming into BCMC seriously injured, are they treated right away or must there be a waiting period while the staff at BCMC contacts the Indian Health Service?

MR. SILVA. Well, I wish I could say that they are treated immediately because there is a period of waiting from 4 to maybe 8 hours.

MR. POWELL. How do you account for this, particularly in emergency cases?

MR. SILVA. Well, cases that are brought in, some are seriously—And you can just see the people going to and fro in the presence of the patient. It seems like they are not even paying attention to the patient. And in some cases where complaints have been brought to my attention, that the other non-Indians who are coming after the Indian patient is there, he's taken care of before the Indian is ever looked at.

MR. POWELL. Mr. Silva, do you feel that the field clinics are adequately serving the people—

MR. SILVA. No.

MR. POWELL. —Indian people? Would you care to comment?

MR. SILVA. The clinics in the field are not adequately set on the basis that the Public Indian Health Service states that the lack of funding—But, in some cases though, I would say that the proper care is not made due to the personnel that is attending to—going to the distance by hurrying there and hurrying back to their base station, so therefore they at times,

you know— The complaints that we have received are that the patients go there, and they are just being rushed through like sheep being put through the sheep dip, without any real thorough exam as to what the ailment is.

MR. POWELL. Are there sufficient professional staff in the local Indian Health Service facilities to meet the needs of the people, in your opinion?

MR. SILVA. I didn't get the question.

MR. POWELL. Are there sufficient numbers of professional staff to meet the needs of the Indian people?

MR. SILVA. It seems like there are, and then still they say that they don't have enough professional staff.

But to go back in relating this, a case back in the time of the Bureau of Indian Affairs, when one Indian doctor, one Bureau doctor, covered an area of so many square miles; it seems like in those days, though, this one physician would do a complete physical and still accomplish the things that they are trying to get at. And now they have more doctors and more of the modern methods of performing the examination, and it seems like they are just at a standstill wherein these things aren't being utilized to give a proper and correct examination.

MR. POWELL. Mr. Silva, in your opinion are the doctors at the Indian Health Service close enough to the Indian people? Do they relate to the Indian people? Are they sensitive to the needs of the Indian people?

MR. SILVA. Well, in some cases, though it seems that the Indian has a problem of reaching the—or the physician has a problem of reaching the Indian because of not understanding.

So on this, you know, here in the last year or two the advisory boards of the Santa Fe Service Unit have established an orientation setup for the incoming physicians where they will be oriented to make them aware of the needs and better understand the problems that may arise if they should come into the various pueblos.

MR. POWELL. You think that doctors who are close to the people are better doctors?

MR. SILVA. Yes, I'm sure, because in one case that I might mention here, one particular one that was stationed here in the Albuquerque Service Unit—attending a particular tribe—and this doctor was dedicated to working with other people even after working hours. At night he used to make his rounds into this pueblo and do outside physical examinations and finding many cases that would have been overlooked if he hadn't gone through. And the people were quite concerned

about his leaving because of these short-term services that are involved in by the HEW [Department of Health, Education, and Welfare] or whatever, the armed services.

MR. POWELL. Are you referring to the rule that doctors in the Indian Health Service stay in one place 2 years and then move on? Is that the general policy of the Indian Health Service?

MR. SILVA. Yes, it is because of the fact that, see, some of these doctors are stationed in the area maybe for 2 years. Then they are gone.

MR. POWELL. Do you think this is a good policy or a bad policy?

MR. SILVA. No, in my personal opinion I think it's a bad policy because of the fact that some doctor may be following a chronic type of an ailment, a case, and then when he leaves another doctor comes, and they will have to start from scratch and continue on by looking through the medical records and so forth and that would hinder the progress of the patient.

MR. POWELL. Now, this 2-year provision, is that the result of the fact that doctors who work in the Indian Health Service almost invariably come from the draft?

MR. SILVA. I imagine that's where it's coming from.

MR. POWELL. Thank you very much, Mr. Silva.

Mr. Bernal, you're on the Albuquerque Area Office Indian Advisory Board? Is that correct?

MR. BERNAL. Yes, sir.

MR. POWELL. Do you believe that the advisory board has an effective input into determining the policies of the health facilities in the Albuquerque area?

MR. BERNAL. Yes, sir, I do think that the input of these advisory boards has improved a lot of the things in the area of Albuquerque to help out the service unit, both Santa Fe and also Albuquerque.

MR. POWELL. Would you care to give some illustrations as to—

MR. BERNAL. One illustration of better communication: When the central office relays communication to the area office, there is usually a gap. And then with the support of these two service unit advisors—I mean chairmen—that support me in my effort to improve communications from Washington down to this level, we wanted to try to bypass the Dallas office.

And then I told them after examination of that place— They say that they had to have a stopping place to inform those

people in Dallas. And what would be the necessity, what would be the important cause, the result, of having that gap? I mean that particular communication was a stopping place or just for temporary examination. They told me they don't have to be there but can come right through.

So this was one of the changes I had for making improvements, for better communication, because this communication can result in bringing a lot of good understanding for this area as far as we are located away from the central office in Washington.

MR. POWELL. As a member of the advisory board, are your views consulted when there is a determination regarding an increase in the facilities, an addition to the facilities? Are your views consulted in that regard?

MR. BERNAL. No, I have not been consulted. Neither have my advisory board members because all the things that have been taking place had to be done at the central level in Washington.

MR. POWELL. Mr. Bernal, what kinds of complaints have you heard most frequently regarding health services?

MR. BERNAL. I have heard most frequently the complaint coming from the utilization and get the benefit from the Indian medical contract with the BCMC here in Albuquerque.

MR. POWELL. Mr. Bernal, do you believe the facilities at the Santa Fe Indian Hospital are adequate?

MR. BERNAL. No, sir.

MR. POWELL. Would you care to comment?

MR. BERNAL. Yes, I do.

MR. POWELL. Would you care to comment as to why you think they are not adequate?

MR. BERNAL. The Santa Fe Indian Hospital, we call it. It has been the oldest type of the Bureau of Indian Affairs hospital when the Bureau was involved in this responsibility. And from that time the old building had been kept and used when the Public Health Service took over. It had been many, many years before my time.

The Indian leaders of the northern area who had the right to use that facility had been trying to encourage the Public Health Service to improve the Santa Fe Indian Hospital. And finally about 2 years ago the Santa Fe Indian Hospital had been taken off the list, the accreditations list of the good hospitals in the United States.

As you well know, Mr. Commissioner, when one has been stripped of and loses the identification, it will lose all the prestige which that falls on the medical people of this country.

I don't see any reason why this had not been done earlier. I don't see any reason why the Public Health Service has been dragging their feet. And I keep telling them that we don't believe in hospitalizing corrals. We don't believe in being treated like a bunch of dogs. Increasing the staff in that hospital is beyond—

When they said that there is no money or no funds available for improvement of that particular hospital, we went in there with my elders, my colleagues of the tribal council, to investigate that place, and we found more doctors in there but not enough Indians involved in the staffing.

I can find—go to town here in any one of these drug stores and find a beautiful smelling perfume soap so I can attract the attention of other people. When you walk into that particular institution you can smell the human waste, and yet these people were crowded into two big rooms, one for the females and one for the males. And in this particular place are only two bathrooms; two washrooms were made available and one bathtub.

It's just an incredible situation that this Public Health Service did not pay attention. My opportunity to tell this Commission is to get on these—get these things out in the open. If the United States Government is failing in responsibility to us Indians and is obligated to our care so we can be able to be qualified in your society, we want this Commission to look into that situation.

Let's not play marbles. Let's do things right.

We, the people of this country, the Indian nation of this country, have in such a way been mistreated, and that's the reason why I and my All Indian Pueblo Council and the chairmen, the Jicarilla, the Mescalero, and the Ignacio and also the Mountain Ute in California and also the Durema and also the Canoncito Navajos are supporting this effort.

Not only Santa Fe Indian Hospital. We had requested some 4 years ago, and finally a little bit of the information came and said our proposal had been accepted in Washington for a new hospital in Santa Fe. Senator Montoya of New Mexico had informed us that \$180,000 would become available to implement that particular part, for planning justification.

It has been about 2 years ago now. Who is doing this, and why this has been at a standstill without any action?

At the same time that, Mr. Commissioner, the Indians made that effort to improve the Santa Fe Indian Hospital, the non-Indian group, the non-Indian organizations—they called them NorCHaP [North Central New Mexico Comprehensive Health

Planning] in the Santa Fe area—tried to involve and interfere with this proposal, and they encouraged the Indian people to go along with their proposal to improve the St. Vincent's Hospital in Santa Fe. I told them this is very impractical and is not in the sense of the Indian people to be treated that way.

One time when that opportunity should be here—and today that opportunity belongs to the Indians, who should use it in order to find a place that they could find that particular thing to improve the health for the Pueblo Indians and their neighboring brothers.

I would charge that particular NorCHaP with interfering with good policy practice that Indians have been seeking for so long. And yet they come in and say, "You Indian people have no right to do it alone. Why don't you involve us in it?" And they say, "We didn't figure it's time that the Santa Fe Indian Hospital go out of operation." That's what they say.

MR. POWELL. Thank you. Thank you very much.

[Applause from audience.]

COMMISSIONER MITCHELL. There is a Commission rule about that. We don't like to have witnesses abused by the audience, which occasionally happens, and so we don't like to have them applauded either. This is really not an audience participation show but a serious hearing and, for the protection of the witnesses as well as for the order of the hearing, please refrain from demonstrations. I know the witnesses will understand.

Thank you.

MR. POWELL. One last question, Mr. Chairman.

Mr. Toledo, in your opinion, does the Indian Health Service make an effort to hire and upgrade Indian employees?

MR. TOLEDO. Very slowly. I think that it's not only true in Indian Health Service but in all areas of employment in the State and counties. You find it in government agencies. You find that in the U.S. Post Office.

MR. POWELL. What about the BIA, Bureau of Indian Affairs?

MR. TOLEDO. Yes, that's true there too. You will find Indians, yes, but they are at a certain specific area, which is embarrassing.

MR. POWELL. Do they have an opportunity for promotion, as they are required to get a preference under the law?

MR. TOLEDO. They show much promise in these areas, Public Health Service, Bureau of Indian Affairs, and even U.S. postal jobs, but they are kept at low-paying jobs while others coming in are upgraded, and those who are coming in are either non-Indians from other areas or Indians who are favored.

MR. POWELL. Thank you. I have no further questions, Mr. Chairman.

COMMISSIONER MITCHELL. Commissioner Rankin, do you have a question to ask?

COMMISSIONER RANKIN. I have been listening to your testimony. And not long ago I listened to some testimony in North Carolina where people brought out about the same criticism of health service in North Carolina as you have brought out with respect to the Indians. And it interested me because your criticisms seemed to me to be a little bit more acute and more sharp in the following respects that you have brought out.

Now, if I haven't given all the points that you have made, I have jotted down some of the points that you have made. First, you mentioned the high cost. Well, we have that in North Carolina.

Then you mentioned the impersonal nature of your medical service here as far as the treatment of Indians is concerned. I find that is rather peculiar to you, and it does not exist too much in North Carolina. Therefore, it's more acute here with respect to Indians than it is in North Carolina.

Then, for emergency care, you brought out a shortness of service there insofar as emergency care is concerned. Then, as far as hospitalization is concerned, that also is inadequate. Then the long wait for attention that you have; we have that in North Carolina, but you have it here also, don't you?

MR. TOLEDO. Yes.

COMMISSIONER RANKIN. Are those the main points that you have brought out? Would you like to summarize one or two additional points that I have failed to mention here, to summarize your testimony? Am I correct that you have brought out these points?

MR. TOLEDO. Yes, we have. I believe that the gentlemen sitting here with me have brought in areas of complaint that are akin to what you have heard.

COMMISSIONER RANKIN. Thank you. That's what I have gained from your testimony. I wanted you to know that also.

COMMISSIONER MITCHELL. Mr. Buggs.

MR. BUGGS. Mr. Bernal, you are the chairman of the Advisory Committee on Health Services for the All Indian Pueblo Council, and from what I gather not much attention is paid to what the advisory committee says or wants. Is that correct?

MR. BERNAL. Yes, sir.

MR. BUGGS. Is there any written function? Is there any statement of what that advisory committee is supposed to be to the hospital?

MR. BERNAL. We have adopted bylaws, and under these bylaws we are subject to advise the Public Health Service at the area level to fulfill their responsibilities and fulfill the desires of the Indian people of the 19 pueblos, the Jicarilla Apaches, the Ignacio Utes and Ute Mountain, Tierra Amarilla Navajos, and Mescalero Apaches.

MR. BUGGS. Did the Public Health Service ask this committee to serve as an advisory board to it?

MR. BERNAL. This advisory board had been originated in Washington under Dr. Emory Johnson.

MR. BUGGS. So it is an official advisory board?

MR. BERNAL. It has officially been set out to help—the understanding was to help the Public Health Service to find an area where improvements should be made through the effort of this advisory board, yes, sir.

MR. BUGGS. What do the hospital authorities say when you make recommendations for such improvement?

MR. BERNAL. We can make recommendations and we can call attention to improvements in certain areas—of certain things that could be done to improve, to satisfy the Indian people, and that's how far we can go. But to follow up, because of too many problems, it was unable to follow up the problems.

But it was expressed by the other board members that whatever the taking the effort has been made, has responded quite fair.

MR. BUGGS. Mr. Silva, if the advisory board is not listened to, does the council have any recourse to the regional office of BIA or the Health Service or to Washington?

MR. SILVA. Well, on the basis of that, the advisory board usually follows any recommendations by formal proposal or resolution for support of the All Indian Pueblo Council and the other respective governors.

MR. BUGGS. But if nothing happens with respect to, for example, the Santa Fe Hospital situation, what would happen if you protested to Washington that no one was listening to the advisory board?

MR. SILVA. Well, if we would protest to the Washington office, I don't believe they would take any more action on what recommendations are made because of the fact that the advisory board is just there to advise. But it seems like, if there is anything there that has to be said relating to Indian problems, it seems the board should have more teeth in it so that other recommendations that are made will be followed through and carried through regardless of who the—or whoever may re-

ceive this type of recommendations—because right now we are just advising the Indian Health Service.

MR. BUGGS. Thank you. No more questions.

COMMISSIONER MITCHELL. Mr. Silva, let's talk about teeth. In what form would you see those teeth? You are a member of an advisory board, and your advice can be rejected now, apparently.

MR. SILVA. Right.

COMMISSIONER MITCHELL. How can that advisory board structure be changed so that you can't be brushed off? What would you recommend?

MR. SILVA. Well, to go down on a basis of our recommendations, if we have more teeth, then we can take further action and see more action be done by sending some of our board members to go directly to the source of where the problem is: the tabling of our recommendations.

COMMISSIONER MITCHELL. So you are not really on the board that makes the final decision?

MR. SILVA. No. We are just advisory.

COMMISSIONER MITCHELL. Are you not represented where the final say takes place?

MR. SILVA. Well, now, I'm not in a position to say this because the governors are the voice of the final saying of any recommendations as brought to the All Indian Pueblo Council, and then they in turn follow through with a resolution to the Public Health Service.

COMMISSIONER MITCHELL. Even the governors do not participate in the final decision then?

MR. SILVA. In some cases they do. When there is a decision that has to be made involving like, say, the Indian hospital that Mr. Bernal just mentioned, there the governors are all aware of the content of the proposal. So, therefore, when NorCHaP started coming in to adjoin the Indian hospital with another private institution, the governors stood firm and said, "No, we don't want that," because of what had transpired prior to this by using an Indian as a tool, like a carpenter would use a hammer, to get their funding; and after the thing is accomplished, then we are forgotten. So we don't want to go into that.

COMMISSIONER MITCHELL. But the governors then are to some extent your teeth?

MR. SILVA. Right. Right.

COMMISSIONER MITCHELL. Let's talk about what you call the BCMC, the Bernalillo County Medical Center. You say in testimony—or Mr. Bernal may have said—I think you both

did—that Indians who go to that medical center are given slower treatment, have to wait longer, and essentially get less service than other people from the county. Right? Do I understand your testimony correctly?

MR. SILVA. Well, yes, the other non-Indians that come after the Indian get—

COMMISSIONER MITCHELL. Get treated sooner and the Indian waits?

MR. SILVA. Right.

COMMISSIONER MITCHELL. Now, that medical center uses Federal funds in a very substantial way I take it, doesn't it?

MR. SILVA. Right. That center when it was established back some years back, was set up as a Bernalillo County Indian Hospital. But as it went on, like I just mentioned before, they used us Indians as a tool to accomplish their need for receiving their funding; and after that is accomplished, what happened, they just put us aside, and now we are in the background of all the things that are supposed to have been accomplished for us, for the Indian people.

COMMISSIONER MITCHELL. Would you think that withholding Federal funds or changing the nature of the way those funds could be spent by that hospital would help improve—is that the kind of teeth you are talking about?

MR. SILVA. Well, if that can be accomplished and we have something to say about these things, I am sure that we will have something accomplished because, as of now, we speak but no one pays attention to us because there are no teeth in there, where we can really set our teeth into it.

COMMISSIONER MITCHELL. You know, part of the process that we are engaged in right now in these hearings, even though we are a bureaucracy, is to try to find practical solutions and not, as one of you said, just play marbles with these problems.

And one of the practical solutions to your kind of a problem is to give the people who have advice and who are deeply concerned some kind of leverage or teeth, as you put it very, very well, and that is why I am asking you where you see the teeth.

Now, Mr. Buggs has been squirming next to me, so I am going to recognize him.

MR. BUGGS. I am just a little confused about the role of the governors in this. Are you suggesting that the governors can overrule any procedure initiated or instituted by the administration of that hospital? Or can they not? Where does their authority stop?

MR. SILVA. No, they cannot, because it's a Federal institution.

MR. BUGGS. In other words, if they say, "You should spend \$180,000 to upgrade these facilities because human waste is being smelled in there," the hospital administration doesn't have to do that if it doesn't want to?

MR. SILVA. Well, the hospital administration wants to do that, but the funding source, wherever the fund is allocated, is the source wherein it's dragging and lacking in supporting the inquiries that are made by the Indian.

MR. BUGGS. But suppose the funds were available. Could the governors determine where those funds would be spent?

MR. SILVA. If they would have that authority, yes, because, see, the allocations are appropriated by the Congress to the Indian Health Service. It's earmarked for certain phases of the programs.

MR. BUGGS. By the Indian Health Service? Not by the governors?

MR. SILVA. By the Indian Health Service. Not by the Indians themselves. We would like to have this thing done wherein the Indian can have some say-so as to how these funds can be expended.

COMMISSIONER MITCHELL. If I understand you correctly, Mr. Silva, what you seem to me to be saying is that Indian funds appropriated for Indian health services often end up used for health services in the general community and often at the expense of the Indians. Is that correct?

MR. SILVA. Well, if I understand your question correctly, the funding that is allocated to the Indian Health Service for Indian health services is not adequate.

COMMISSIONER MITCHELL. But it's one thing for it to be inadequate, but do I understand you to say that this medical center, for example, started out as an Indian center and has ended up—

MR. SILVA. Yes.

COMMISSIONER MITCHELL. Now, the funds that went into it, then, were primarily put into it so that Indians could have medical care?

MR. SILVA. That was the primary understanding that the Indians received with the first establishing of this hospital.

COMMISSIONER MITCHELL. And it has subsequently been changed by common agreement and—

MR. SILVA. As the years went on, without consulting the pueblo governors as to how the services should be rendered to the Indians.

COMMISSIONER MITCHELL. The hospital just changed?

MR. SILVA. Just changed and went on its way without— And it seems like though that either the Bureau of Indian Affairs or the Indian Health Service should have some say-so in this changing realm of the program because they have the responsibility as the overseers of our Indian problems. But it seems like somewhere down the line they have neglected their responsibility of not fulfilling or observing this type or trying to change it.

COMMISSIONER MITCHELL. Thank you.

Mr. Powell, I would like very much to have some information for the Commissioners on this transition at BCMC, and I recognize it may be a more complex matter than we can produce in testimony here.

MR. POWELL. We will provide it for you, Mr. Chairman.

COMMISSIONER MITCHELL. Gentlemen, thank you very much for coming and for your assistance to the Commission. We are very much in your debt and hope that you will observe the rest of these hearings if you can and give us your advice and guidance at a subsequent time.

I would now like to call Mr. Mike Perez and Mr. Jimmie Coriz. Mrs. Wendell Chino, who was going to be on that panel, has not been able to be with us because she has another commitment and couldn't wait.

So we will work with Mr. Perez and Mr. Coriz. Are they here?

MR. POWELL. Mr. Toledo, are you going to let us have that statement for the record?

MR. TOLEDO. I'll let you have it after I have doctored it up a little because it's all rough writing.

COMMISSIONER MITCHELL. We will depend on you for a final copy.

MR. TOLEDO. I will.

[Whereupon, the document referred to was marked as Exhibit No. 4 and received in evidence.]

COMMISSIONER MITCHELL. Mr. Perez and Mr. Coriz. Well, we have Mr. Perez. Mrs. Chino is not here, I assume. Meanwhile, please proceed with Mr. Perez.

You are Michael Perez?

[Whereupon, Mr. Michael Perez was sworn by Commissioner Mitchell and testified as follows:]

COMMISSIONER MITCHELL. Mr. Powell.

TESTIMONY OF MR. MICHAEL PEREZ, NAMBE PUEBLO

MR. POWELL. Mr. Perez, would you state, please, your name, address, and tribal affiliation for the record?

MR. PEREZ. Mike Perez from Nambe Pueblo.

MR. POWELL. Mr. Perez, where do members of your family go for medical care?

MR. PEREZ. In Santa Fe.

MR. POWELL. Is this generally true for most people of Nambe Pueblo?

MR. PEREZ. Yes.

MR. POWELL. Mr. Perez, in your opinion, do the people of the Nambe Pueblo receive good medical care?

MR. PEREZ. Sometimes. It depends on what doctors they have.

MR. POWELL. I see. Is this view based on any bad experience that you have personally had or members of your family have had at the Santa Fe Hospital?

MR. PEREZ. Yes.

MR. POWELL. I meant the Santa Fe Indian Hospital, that is.

MR. PEREZ. Right.

MR. POWELL. What experiences have you personally had with—

COMMISSIONER MITCHELL. Excuse me. Just a second. I think this is Mr. Coriz.

MR. CORIZ. Yes, sir.

COMMISSIONER MITCHELL. May I swear you in just while you're here?

[Whereupon, Mr. Jimmie Coriz was sworn by Commissioner Mitchell and testified as follows:]

TESTIMONY OF MR. JAMES A. CORIZ, SANTE FE, NEW MEXICO

MR. POWELL. Mr. Perez, what personal experiences have you had with the Santa Fe Hospital?

MR. PEREZ. Well, now, it's been a year now. I went to the doctor, and I went in and this doctor checked me out. Well, he didn't actually check me out. All he did was just look at me and said nothing was wrong with me. So I just went home.

MR. POWELL. Did you give him a complaint?

MR. PEREZ. Yes. I had a pulled tendon, the second doctor found out, and I went back the following day because it was bothering me a lot. So the second doctor checked me out real good and told me that I had a pulled tendon and put me in a brace and gave me some pills to relieve the pain. So that was my experience.

Another experience was one of my sisters. Her appendix had ruptured, and actually it took 4 days before the doctors actually found out what was wrong with her, and that was

because they took her to St. Vincent's and they had to operate on her, and after that they gave her a 50-50 chance to live.

MR. POWELL. Let me make sure I understand. Your sister came in complaining with some kind of physical complaint?

MR. PEREZ. Yes, the side-ache. It was her appendix that had ruptured.

MR. POWELL. She came in on a particular day and was seen by a doctor?

MR. PEREZ. Yes.

MR. POWELL. And this was a doctor at the Indian Health Service at Santa Fe Hospital?

MR. PEREZ. Yes.

MR. POWELL. And what did that doctor tell her?

MR. PEREZ. That it was just growing pains.

MR. POWELL. Did she come in again?

MR. PEREZ. She came in again Tuesday.

MR. POWELL. She came in first on a what?

MR. PEREZ. A Monday. Tuesday, Wednesday—

MR. POWELL. And she was told it was growing pains?

MR. PEREZ. Yes. And all they did was just give her pain killers.

MR. POWELL. So then after 4 days, Monday, Tuesday, Wednesday—

MR. PEREZ. Thursday they took her into the St. Vincent's Hospital.

MR. POWELL. St. Vincent's Hospital is a private hospital which provides care to Indians on a contract basis? Is that it?

MR. PEREZ. Yes.

MR. POWELL. Emergency cases?

MR. PEREZ. [Nodding affirmatively.]

MR. POWELL. When was the first time that your sister's illness was diagnosed as an appendix?

MR. PEREZ. Well, actually that night. Well, Thursday morning, early in the morning.

MR. POWELL. Not until she got to St. Vincent's?

MR. PEREZ. Right.

MR. POWELL. I see. As a result of this, is your sister now in good health?

MR. PEREZ. Not really. She still— She's not as healthy as she was. Poisoning—

MR. POWELL. This occurred when? How long ago?

MR. PEREZ. Actually it's about 4 years now.

MR. POWELL. Did you have a similar experience with your grandfather?

MR. PEREZ. Yes. Well, it was during the Labor Day weekend.

My dad took him in to the hospital, and he waited there for almost 2 hours. Not even—the doctors didn't even show up. He had a heart condition, and the doctors didn't show up, so he just dressed up and left, and 16 days later he was dead because of that.

MR. POWELL. How long ago did this occur?

MR. PEREZ. It's been about a year and 2 months now.

MR. POWELL. Now, our investigation indicates that another member of your family had a problem with the Indian Health Service. Would you care to comment on that?

MR. PEREZ. Yes, my sister.

MR. POWELL. This is another sister?

MR. PEREZ. Yes, this is the youngest one. It happened during the fiestas in Santa Fe. She got food poisoning, and my mother had called up to the hospital telling the doctor that she was going to take her in. It's a 20-minute drive from Nambe to Santa Fe, and when we got there the doctor wasn't there, and my sister was really sick with a food poisoning, and we had to wait there before the doctor came.

MR. POWELL. Based on your conversations with other people at the Nambe Pueblo, is this a common occurrence, people having to wait a long time?

MR. PEREZ. Yes.

MR. POWELL. Do you have an opinion with respect to the general view of the people in the Nambe Pueblo on the Santa Fe Hospital? Do they think the service there is adequate or not adequate?

MR. PEREZ. Not adequate enough.

MR. POWELL. All right. Thank you.

Mr. Coriz, would you please state your name, tribal affiliation, and address for the record?

MR. CORIZ. My name is James A. Coriz, Jr. I live in Santa Fe, New Mexico. I am Santo Domingo Indian.

MR. POWELL. Has a member of your family had a negative experience with the Indian Health Service?

MR. CORIZ. Yes, we have.

MR. POWELL. Would you care to tell us about it, please?

MR. CORIZ. Yes, I would. It happened back in March of this year, 1972. She was employed at the American Institute of Indian Art—

MR. POWELL. Who are we talking about now?

MR. CORIZ. My mother—as a house mother. She became ill one day and had to go home. She stayed home for a couple days, but then after that she went and visited the hospital and wanted to find out—

MR. POWELL. Which hospital are we talking about?

MR. CORIZ. The Public Health Service Hospital in Santa Fe—and find out what was wrong with her.

Well, she entered the hospital, and she did see a doctor, and the doctor diagnosed her case as a head cold and gave her some pills and told her to go on home and stay in bed. This was roughly about the first of March. The second week in March her condition became a little bit weaker. And I happened to notice that her left side—her eye started to swell, and she complained of this. The tear ducts started to open; water started to drain.

And we asked her to go back to the hospital and see what was wrong with her. Well, she being an old—I mean an Indian woman—she felt that the next day would probably be a better day. But it never did occur in that phase. It got worse.

Then about the 11th of that month we took her in to the hospital again. My wife and my sister went with her, and they talked to the doctors and told the doctors at the hospital that her condition was—happened to start to deteriorate, and they wanted to know if they could do something for her.

Well, my wife also told the doctor at that time that the way she was favoring her left side and her eye on the left had started to swell that possibly she could have had a stroke. Anyway, they examined her. They gave her a blood test. And it took a very, very long time for this to come back.

The next day, which was Wednesday, the test was supposed to be back, but the doctor said that he could not give her the results because it was his day off, and he wouldn't be in until Thursday. But he definitely said he would call, but he didn't.

What happened was that that evening, when I came home and I found that my mother was starting to really get weaker, I called the doctor in Santa Fe, Dr. Chris Mingus, and he said to meet him at St. Vincent's Hospital at 7:30.

Well, we took her down to the hospital at St. Vincent's, and we admitted her there. She went into the examining room. Within 30 minutes they found out that she had either a tumor, a cyst, or blood vessel that was broken in her head. The way they found out was that they took a spinal tap, and they found that the pressure was double the amount that should have been in her spine.

That evening Dr. Mingus called in a neurosurgeon. The next day they took a brain scan, and they found through the brain scan on her left side that there was a heavy formation from the picture.

Well, they thought that it was probably a leaking blood

vessel, but they wanted to operate. My dad wasn't there at that moment, so we had to find him, and he did come back.

He agreed and consented to go ahead with the operation to relieve the pressure. But what happened was that after they went into the operating room they found a massive tumor, and the neurosurgeon found that it was malignant. Not only that, he found a large lump in her breast. And I feel that if she went in the Public Health Service and had a good, thorough examination they would have found this out very easily. But, of course, this wasn't the case.

But that's just about the end of it. Within a month after the brain operation she had to have her breast removed in Albuquerque at St. Joseph's Hospital, and then about a month and a half after that she died.

MR. POWELL. You mentioned that you finally got to St. Vincent's Hospital on a Thursday. How many days had elapsed since you had first gone to the Santa Fe Indian Hospital?

MR. CORIZ. I'd say about 2½ weeks.

COMMISSIONER MITCHELL. Mr. Powell has suggested that although Mrs. Wendell Chino isn't here—and we did want to ask her about medical problems she had—that Mr. Wendell Chino is here.

Mr. Chino, would you like to testify? You have already been sworn so I don't have to do that again. The others will just stay, and we can ask Mr. Powell to question Mr. Wendell Chino.

FURTHER TESTIMONY OF HONORABLE WENDELL CHINO

MR. POWELL. Thank you, Mr. Chino, for agreeing to come up.

Our investigation indicates that you have had some negative experiences with the Indian Health Service and also that you are familiar with other instances of bad experience. Would you care to tell us about it, please?

MR. CHINO. Mr. Powell, first of all, let me apologize for my wife. My wife has a speaking engagement momentarily here in town, and then shortly after she leaves for Washington. So, it's been said you know, a pinch-hitter doesn't always make a home run, but I'll do what I can.

COMMISSIONER MITCHELL. We also recognize that women have been liberated lately.

[Laughter.]

MR. CHINO. Somebody said, "Do you want women's lib or women's lip?"

[Laughter.]

Okay. It is regrettable— There are three of us here now to talk about the services rendered to Indian people. And on

October 1, I came pretty close to meeting death as a result of what I consider to be dereliction of duty on the part of the doctor at Mescalero.

I came home ill from North Dakota, and I presented myself to the doctor with a temperature of 103, and he gave me a cursory examination and sent me home. And during the night my temperature ran as high as 104, so the next morning my good wife encouraged me to go back to Public Health Service Hospital in Mescalero. I refused because I had already presented myself to the doctor there, and he could not diagnose my illness.

So I had her call an internist in Ruidoso, New Mexico, and she took me to the hospital there. And, as the gentleman said here a moment ago, the doctor there only took 5 minutes with a good examination to come to the conclusion that I had a viral double pneumonia, and shortly after I was admitted to the hospital.

My wife took it upon herself to discuss the matter with the doctors there in Mescalero, and they had all kind of reasons as to why sometime they feel that they could not provide a good service. But the attitude was that, well, you can treat pneumonia at home. But the doctor in Ruidoso said, "How can you treat viral pneumonia at home?"

Oh, we have, of course, a different consensus of opinion here as to where is the proper place to treat viral pneumonia. But the fact that I was hospitalized, I guess, is a good indication that viral pneumonia has to be treated in a hospital. And certainly this should not be the case with any Indian because I take the position that all of the service rendered to the Indian people is not a welfare program, but these are entitlements pretty well determined by legislation, by treaties, by judicial decisions that Indians are entitled to these services and that these services should not be looked at with clouded eyes as if the Indian is just nothing but a welfare recipient.

MR. POWELL. Mr. Chino, I have just a couple of questions. After you had first gone to the Indian Health Service and not been diagnosed, as I understand it, there was a call made back to the Indian Health Service? Is that correct?

MR. CHINO. This is correct.

MR. POWELL. And at no time, either while you were at the Indian Health Service or during the call during which your wife described the symptoms, were you diagnosed as having pneumonia? Is that correct?

MR. CHINO. This is correct.

MR. POWELL. Okay. Now, Mr. Chino, if you as the president

of a tribe would be treated in the way that you were treated, do you feel that other Indians would be treated any better at the Indian Health Service?

COMMISSIONER MITCHELL. Maybe that's a political question. [Laughter.]

MR. CHINO. Well, the doctors also thought that some politics were involved as to how you treat the president of the tribe. But I do not consider, myself, that I am any better than any of my fellow tribal members, but that I should be entitled to the same service and that my people should likewise be accorded the same type of service that they should render to me.

In addition to these remarks, rather than take the Commission's time, I would like to present some complaints that have been filed with the health department program on my reservation, and I just briefly cover the areas that are covered here in this brief report; it has to do with poor dental services, eyeglasses, the hospital staff's attitude, contracts, patient, doctor and nurse communications, and elective conditions.

COMMISSIONER MITCHELL. Will the clerk pick that up and make it part of the record? It will be entered as part of the testimony here.

[Whereupon, the document referred to was marked as Exhibit No. 5 and received in evidence.]

MR. POWELL. Mr. Chairman, I have no further questions. I turn the questioning over to the Commissioners and the Staff Director.

COMMISSIONER MITCHELL. Commissioner Rankin?

COMMISSIONER RANKIN. I have listened to the statements made by all three of you. Would you recommend that any other Indian go to this hospital for service?

MR. CORIZ. I wouldn't.

COMMISSIONER RANKIN. You wouldn't?

MR. CORIZ. No, sir, I wouldn't.

COMMISSIONER RANKIN. You think this error is more than normal error? We all make errors, you know. I try to teach, and they say my grades are not correct sometimes—my students do.

MR. CORIZ. I think you and I might be in a little bit of a different position than taking an average Indian off the reservation, having him to come in to the hospital, say 35 miles, maybe 90 at the most—maybe he can't express himself like you and I can here—and have him come in there and meet a doctor and say, "I hurt here." Is it pressure or what kind of pain is it, you know? And then all of a sudden the doctor gives him some pills because he diagnosed it, and it could be a misdiagnosis

problem to begin with. He turns around and goes back to the reservation, and in 2 days he dies. But that doctor doesn't know anything about it because that Indian will be buried there on the reservation. This is something that you people don't know about.

We need good doctors. We don't need doctors that go to work between 8 and 5. Normally, general practitioners within Santa Fe—their day starts at 7:00 o'clock, and their day doesn't normally end till about 7:00. It's a little different situation.

COMMISSIONER RANKIN. Yes. Well, does the hospital stay full?

MR. CORIZ. Most of the time it does in Santa Fe, yes, sir. It does.

COMMISSIONER RANKIN. In spite of the testimony you have been giving here, the hospital really stays full? Is that correct?

MR. CORIZ. Yes. Most of the time, yes.

COMMISSIONER RANKIN. Is that because they have no other choice? Is that what you're trying to say here?

MR. CORIZ. Well, I don't know.

MR. CHINO. Well, I suppose depending on the family economics. I suppose if a family feels that they can afford to go to a private doctor, private hospital, they will do that. But in many cases, of course, the only services—the general run of our Indian people, I'm very certain, know that the only medical services that they know and have received all these years is the service provided by the United States Public Health Service, so naturally they will avail themselves of these services.

COMMISSIONER RANKIN. Well, I like to summarize, and if I were going to summarize again, your testimony is that the medical services given, you feel, as far as the Indians are concerned in this hospital, sir, are entirely inadequate? Is that right?

MR. CHINO. It's inadequate and could stand a great deal of improvement.

COMMISSIONER RANKIN. And you would like for us if we could in some way to start a movement toward improvement? Is that correct?

MR. CHINO. Yes, sir.

MR. CORIZ. Correct.

COMMISSIONER MITCHELL. May I ask you, Mr. Coriz, your mother ended up with a mastectomy I think at St. Joseph's here in Albuquerque. Now, you paid for that?

MR. CORIZ. Well, she had insurance.

COMMISSIONER MITCHELL. But, just the same, it was a different circumstance than the Public Health Service.

MR. CORIZ. Right.

COMMISSIONER MITCHELL. And, Mr. Chino, you had another doctor who hospitalized you and that was your private doctor, and I assume you paid him?

MR. CHINO. Well, I held the United States Public Health Service to that entitlement.

COMMISSIONER MITCHELL. So in both cases you had public health coverage?

MR. CHINO. Right.

COMMISSIONER MITCHELL. Thank you.

There being no further questions, and since we are running a little bit—

MR. BUGGS. May I ask one question?

COMMISSIONER MITCHELL. Mr. Buggs has a question.

MR. BUGGS. Mr. Perez, when your sister who had the food poisoning went to the hospital and the doctor came after you had driven 20 miles, did he give a reason as to why he was late?

MR. PEREZ. No, he didn't give a reason.

MR. BUGGS. What did he say?

MR. PEREZ. He didn't say anything really. He just went in, started checking her out.

MR. BUGGS. Mr. Chino, as governor of a tribe, what kind of authority do you have over institutions that are on your reservation?

MR. CHINO. I think that it is only within the last few years that the Indian people have been encouraged and given the opportunity to serve on advisory committees and to establish hospital health boards so that the local people at least could provide some input to the type and kind of services and quality of services provided to them.

MR. BUGGS. Was that hospital that gave you that bad advice on your reservation?

MR. CHINO. I really don't think that they have received what I consider to be an in-depth input from our people.

MR. BUGGS. But it is located on your reservation?

MR. CHINO. Yes, sir.

MR. BUGGS. But you can't tell them to get lost then even though it's your reservation? You can't say, "I don't want you here any more"?

MR. CHINO. Well, to me, that's not the point. The point is that the facilities are there; the personnel are there, and what we're talking about, I think, is to improve the delivery as well as the quality of service.

MR. BUGGS. I know.

COMMISSIONER MITCHELL. What Mr. Chino may be saying is that a bad doctor is better than no doctor.

MR. BUGGS. Is that what you're saying? A bad doctor is better than no doctor at all?

MR. CHINO. Well, I feel if a doctor in my particular case— If he could not diagnose my case, then the next move should have been under the contract provisions to refer me to a specialist, to an outside doctor, a doctor engaged in private practice.

MR. BUGGS. But he didn't do that?

MR. CHINO. He didn't do that.

MR. BUGGS. So what kind of relief do you have over a doctor who is practicing medicine on your reservation?

MR. CHINO. I suppose depending on what happened that a malpractice suit, I suppose, could be opened.

COMMISSIONER MITCHELL. But, Mr. Chino, you did go to another doctor. You had access to another doctor. In your case you could go to another doctor.

MR. CHINO. Yes, sir.

COMMISSIONER MITCHELL. Mr. Powell has a comment to make, and I'm going to recognize him in a minute. And I'm going to ask the Health Service people testifying later this question. One of the things that is happening today in an effort to make cost of health services lower or within the means of more people— And, by the way, there are many people in this country who are not Indians who have an agonizing problem of paying for health services. A day in the hospital is a shattering experience for many people who have no funds at all.

Most medical technology is moving toward computerized blood tests, thermograms, where you stand in front of a machine and it identifies internal infections—kinds of computerized tests, new kinds of photography, new kinds of body chemistry studies which often predict coronaries and malignancies and people who have tendencies toward those. Now, it's clear from what we have heard here this morning the Indian feels that, when he is examined by a doctor, he should be handled by the doctor and that this is a mark of good medicine and that the diagnosis is likely to be better. Yet the rest of society is moving away from that, chiefly because there aren't enough doctors. My doctor very rarely handles me, for example, but uses very, very sophisticated kinds of blood chemistry, electrocardiograms, all sorts of other things.

What do you think is going to happen? How can these kinds of generally superior medical services be brought to the Indians without their feeling that they are being given some kind

of second class medicine? Is there a way to make that transition?

MR. CORIZ. Well, I really think that there needs to be some classes and it needs to have some exposure on it myself in order to get adjusted to it.

COMMISSIONER MITCHELL. Because really better medical service for all society seems to me to be leading in the direction not of more doctors, more human error, but more techniques for providing doctors with the information they have to have to treat people scientifically.

MR. CHINO. Commissioner Mitchell, I think that in some cases where some of the hospitals that are located in a community are already isolated, therefore I think it very important that if not an entire tribe— Particularly, I see no difficulty with a small tribe, 2,000, 3,000 membership, why the total population couldn't be computerized.

COMMISSIONER MITCHELL. You see, they are now beginning to speak of satellite health centers where you have a television camera and a remote electrocardiogram, remote blood chemistry device, where a patient is first seen often not by a doctor but by a paramedical person, and where he then calls a hospital and they look at him on television for a while and watch his electrocardiogram by remote access, and ask then that he be brought to the hospital or that he be treated locally. And I think it's going to be hard for me to accept too that somebody can look at me on television camera and tell me if I am feeling well or not when I know how I feel myself.

But I think these are directions in which this is moving. One of our problems may be how do we get better medicine without being affected by the sense on the part of people—which many of us have—that a good doctor is a doctor who really pokes, prods, feels you, touches you, and is responsive to your description of your suffering.

Well, Mr. Powell, do you have a—

MR. POWELL. I think you covered it, Mr. Chairman. I just wanted to point out that the BIA, the Indian Health Service officials will be appearing later and will have an opportunity to respond. There doesn't seem to be any dispute regarding the business of long waits, regarding the extent to which there is a communication gap created by cultural differences, regarding the fact that the testimony here about Mr. Chino's mother and about the relatives of Mr. Perez—I'm sorry, Mr. Coriz's mother and President Chino's experience—and that they have an impact on the perceptions of Indians regarding the quality of service at health services.

We do not have sufficient facts to reach a conclusion regarding whether this is a pattern. I wanted to make that clear. These things happen and they certainly influence the perceptions of Indians. Nor can we in any way make judgments about the extent to which the doctors involved did or did not perform adequate medical service.

COMMISSIONER MITCHELL. Thank you.

Before we adjourn I want to thank the witnesses again, especially President Chino on whom we have imposed a great deal this morning.

I want to make it very clear, since we are now hearing from individuals who come here voluntarily and submit themselves to questioning that— I just want to remind everyone, and for the record, that it is a violation of Federal law to in any way, shape, or form intimidate, mistreat, or in any way abuse anyone who has testified under subpoena from the United States Commission on Civil Rights.

The Commission will now recess for lunch, and we will convene again in exactly 1 hour or, let us say, 10 minutes after 2 o'clock.

[Whereupon, at 1:05 p.m., the luncheon recess was taken.]

TUESDAY AFTERNOON SESSION

November 14, 1972

COMMISSIONER MITCHELL. This Commission hearing is now in session.

For those of you who came late, may I simply remind you that we would like to keep this platform area clear except for authorized personnel who do have to bring messages and move around and who will occasionally be setting up displays, and also remind you that this afternoon we will meet until 3:45 when we will have a 15-minute recess—we may have a later one around 5:00 or 5:30—and the hearings today will conclude at 7:35.

We are going to finish the health services sequence with the next two panels of witnesses, and after that we will hear an employment summary, and then we will be talking to private and Federal employers and employees for the balance of today's hearings.

At this time I'd like to call to the witness stand two registered nurses, Rosemary Williams and Janice Kekahbah.

Are they here?

MS. WILLIAMS. Ms. Kekahbah has stepped out for a moment.

COMMISSIONER MITCHELL. Will you just sit down? We'll wait for her then.

I hope those of you who are here will take the opportunity to take a look at some of the materials published by the Commission which are ordinarily available for distribution and feel free to either take those materials or, if there are only samples left, to request that they be sent to you. They include, among other things, an Indian Civil Rights Handbook which the Commission has produced and which is very, very widely distributed and which is in great demand by many people who are interested in Indian civil rights. I think we have copies of that outside and other materials which may be useful to you.

Mr. Powell, would you like to start with Ms. Williams?

MR. POWELL. Yes.

COMMISSIONER MITCHELL. Let's see if we can get started, Ms. Williams, because we are a little bit behind. You are Rosemary Williams?

MS. WILLIAMS. Yes.

[Whereupon, Ms. Rosemary Williams was sworn by Commissioner Mitchell and testified as follows:]

COMMISSIONER MITCHELL. Thank you. Mr. Powell, your witness.

When Ms. Kekahbah comes in, would you ask her to come up here? If you see her, would you invite her up?

**TESTIMONY OF MS. ROSEMARY WILLIAMS AND MS. JANICE KEKAHBAH,
REGISTERED NURSES**

MR. POWELL. Ms. Williams, would you please state your name, address, and tribal affiliation for the record?

MS. WILLIAMS. Rosemary Williams, Osage Indian. I live in Oklahoma City right now.

MR. POWELL. Would you briefly describe your educational background and tell us about your present position?

MS. WILLIAMS. I received a diploma in nursing from St. John's. Then I received a bachelor's degree from the University of Oklahoma in nursing. Then I received a master's degree in psychiatric nursing from Rutgers University. Presently I am assistant professor at the University of Oklahoma, College of Nursing.

COMMISSIONER MITCHELL. Would you like to swear in Ms. Kekahbah?

[Whereupon, Ms. Janice Kekahbah was sworn by Mr. Powell and testified as follows:]

MR. POWELL. Ms. Kekahbah, would you please state your

name, address, and tribal affiliation for the record?

MS. KEKAHBAH. Yes. My name is Janice Kekahbah. I am a Kaw Indian from Oklahoma. And what else? My education?

MR. POWELL. Your address. Would you give that?

MS. KEKAHBAH. It's in Norman, Oklahoma.

MR. POWELL. Would you briefly describe your educational background and tell us about your present position?

MS. KEKAHBAH. Yes. I have a bachelor's from the University of Oklahoma in nursing and a master's from NYU in nursing also, flight nursing.

MR. POWELL. We understand you both engaged in a study of the Indian health services in the Albuquerque area. Is that correct?

MS. WILLIAMS. That's correct.

MR. POWELL. Ms. Williams, would you care to describe that study, what it was about, who you spoke to, what your methods were?

MS. WILLIAMS. Before I begin with the study, I'd like to make some basic statements in order to put the study in proper perspective.

First, it has been my experience when non-Indians ask for information about Indian people and when I proceed to fulfill their request by giving them some of the most basic information, they then proceed to give me incidences and examples by which as far as I can tell they are saying: "Well, that's nothing. I have an aunt or an uncle, or myself, who did or said or otherwise experienced the same thing." And by this security maneuver they endeavor to cloud or obscure the uniqueness or specificity of the pattern or life style I am trying to present.

Therefore, in order to short-circuit this type of interaction, let me say at the outset that Indian people or any group of people may have certain life styles or patterns of living or experiences which, although not totally unknown, are unexperienced by others, are more specific to the group under discussion than they are specific to the majority of the individuals not in the group.

For example—this is simplistic but this is just an example—if 75 percent of the people who live in Gallup wore Levis and 5 percent of the people in Albuquerque wore Levis and if I were to say, "Let's talk about the fact that people in Gallup wear Levis," and you were to start saying, "Well, not everybody in Gallup wears Levis," or, "I know somebody else that wears Levis," that's not going to get us very far in problem-solving concerning people in Gallup wearing Levis. That's a simplistic example.

Similarly, when I start pointing out to you that Indian people have inferior health services, it doesn't get us too far for you to start giving individual incidences of a fellow you once knew, or yourself, who has also had bad health care.

I will concede that no one in this country has excellent health care. However, the bad health care for non-Indians, as opposed to the bad health care for Indians, has resulted in the following:

Of all groups, Indian people have the highest rate of infant mortality, have the highest rate of tuberculosis, otitis media, trachoma, have the lowest median age of longevity. The Indian suicide rate is higher than the national average, and for boarding school Indians it's 5 to 1 of the national average.

So, yes, non-Indians have bad health care services available to them, but in the light of statistical data I don't think it's very likely that anybody would like to trade places with us. Nor does it get us very far to say that everybody makes mistakes, as was said this morning.

Although the U.S. Government has had the responsibility of health care for Indian people since the 1800's, the statistics attest to the fact that this responsibility has been taken lightly and, one might conclude, hostilely.

In an attempt to understand the situation more clearly, let us look at the history of the U.S. Government in meeting this obligation. Having incurred the responsibility of providing health care to Indian people in the 1800's, the U.S. Government charged the Department of War with the obligation of carrying out this responsibility. You might say that this was a slight conflict of interest, since the Department of War was also at that time charged with the responsibility of extinguishing the American Indian.

Records show that during this time the military doctors made examinations, diagnosis, and treatment of Indian people through peepholes in the walls. This is the historical root of what was said this morning by our Indian people about the type of examinations given by U.S. Public Health doctors to Indian people.

Also, I was educated in white schools. I received health care in Indian hospitals. I did an 11-month research study with Indian people. And now I am presently working again with non-Indians. And I'll tell you there is less time spent in talking with or touching Indian patients than there is with non-Indians.

In the early 1900's, Indian health was placed in the Department of the Interior along with the buffalo, trees, and national

parks. During this time the Bureau of Indian Affairs hired a total nursing staff of one. She reports her primary responsibility was to institute a massive birth control program and thereby eradicate the Indian problem altogether. The nurse, however, failed to follow out the doctor's order.

In 1956, Indian Health Service was turned over to the Department of HEW, Public Health Service. Since that time there has been some improvement, mainly through the leadership of a few dedicated health professionals.

However, the glaring statistics still attest to the fact that, as a whole, the U.S. Government still has little truck with the health needs of Indian people. For instance, if the suicide epidemic which is rampant among the Indian people were within the white community, there would be large-scale governmental and private investigations into the phenomenon.

Furthermore, Mr. Commissioner, this morning you stated that the national trend is toward computer diagnosis. This is true in places like Kaiser in California. However, there are other national trends. For instance, family medical clinics, nursing clinics, which has a more humanistic approach to health care than the machine care.

Are there any questions?

MR. POWELL. Yes. Ms. Kekahbah, relating more specifically to the study—which I understand that you and Ms. Williams conducted—of the Indian health services in this area, would you care to tell us about that study? When was the research done? What were the groups of people that you talked to? And what were the kinds of information that you gathered? Either Ms. Kekahbah or Ms. Williams, but we would like to know about that study—what information was gathered in that study which I understand was done in—

MS. WILLIAMS. New Mexico.

MR. POWELL. It was done when?

MS. WILLIAMS. From June through May.

MR. POWELL. All right.

MS. WILLIAMS. Do you want the sample? The name of the study is "A Study of the Relationship Patterns between the Deliverers of Health Care Services and the Consumers of Health Care Services Within the Indian Community."

We approached the Indian Health Advisory Board here in New Mexico, and they concurred in the need for this study and helped us with entrance into the communities.

MR. POWELL. You were funded by the Indian Health Service?

MS. WILLIAMS. Under private contract with Indian Health Service.

MR. POWELL. What were you trying to find out? And how did you find that out? What kind of information were you trying to get? Did it have something to do with perceptions of Indians regarding the kind of service they received?

MS. WILLIAMS. That was part of it, and we devised a guide for in-depth interviews; one for the deliverers of health care and one for the consumers of health care. These were getting at the same questions. They were open-ended questions. We allowed 45 to 60 minutes per interview. Sometimes it was longer than that.

COMMISSIONER MITCHELL. Is a copy of this study available?

MS. WILLIAMS. I was told that it has been submitted to your record.

MR. POWELL. We have a copy, and I'd like to submit it for the record.

MS. WILLIAMS. It was a very long study.

MR. POWELL. Ms. Williams, did the Indian people with whom you spoke seem satisfied with the health care provided by Indian Health Service?

MS. WILLIAMS. No, sir, they did not.

MR. POWELL. Would you tell us about what the major complaints were?

MS. WILLIAMS. One of the major complaints was that they wanted doctors to stay longer than 2 years.

Now, I'm going to go back and forth. Like I said, this study was trying to get at the relationship patterns between the deliverers and the consumers.

Okay. Indian people have for a long time said that they would like doctors to stay longer than 2 years. They referred this to the Indian Health Service. Indian Health Service turns it back to the Indian community and says: "Well, it's up to you, community. It's up to you, Indians. If you can get doctors to stay longer than 2 years, certainly they can."

So one of our questions to the physicians was, "What stops you from making a career out of Indian Health Service?" One hundred percent stated, "Bad bureaucracy," frequently—most generally—referring to the "Peter principle." Now, this is something the communities can't—it's up to the Indian Health Service.

MR. POWELL. What about the Indian patients? What were some of the complaints they gave?

MS. WILLIAMS. Well, these are dual things. One of them was they wanted doctors to stay longer. Only 24 percent of the

Indian people said that the doctors and nurses understood and respected their religion and culture. One way that this hurdle might be overcome would be with an orientation like was spoken of this morning, a good orientation. Yet when the doctors and nurses were asked, only 5 percent stated satisfaction with orientation relevant to the people with whom they worked.

MR. POWELL. Ms. Kekahbah or Ms. Williams, could you give any examples of insensitive attitudes on the part of Indian Health Service staff as described by the Indian people? There was an example of a dentist, was there not?

MS. WILLIAMS. Yes, in one of the communities there was a dentist that was abusive to Indian people, especially to the children. He slapped them. He used abusive language with them. And then they thought that he was unnecessarily rough in giving care.

MR. POWELL. What about the facility in which he worked? Were there people using that facility in ways in which it was not intended to be used?

MS. WILLIAMS. I don't think so. I'm not sure what you're referring to.

MR. POWELL. All right. I understand that there is a custom within the Apache community that pregnant women not receive medication. Is there some problem with that from the standpoint of services rendered by professional staff?

MS. WILLIAMS. With this particular lady, she was pregnant, and she had been advised by her shaman or medicine man that she was not to receive medication. The physician ordered an Indian L.P.N. to give the medication, and the L.P.N. went back to the doctor and said that the lady could not take it because of her other commitments, her other beliefs.

So the physician told the L.P.N., "Well, she sure as hell can't refuse an injection," and forced the Indian L.P.N. to give the Indian patient an injection. I think, you know, it would be similar to forcing some of the Christian groups to receive blood when they didn't want to.

MR. POWELL. We heard testimony earlier this morning, most notably from Mr. Silva, I believe, that doctors when they get closer to the Indian people and gain their trust thereby could be of greater service. Would either one of you care to comment on the validity of this approach?

MS. KEKAHBAH. I think that's very true. I think that in one community in particular the doctor did get involved with the community people, and the people liked him very much; and, you know, he helped them start many new programs, and the

Indian people were already dreading his leaving their area.

MS. WILLIAMS. If you're asking is it possible, it's possible because in about at least two instances in two different communities there were physicians that were really integral parts of the community and were accepted by the people as members of the community.

MR. POWELL. We also heard testimony earlier this morning about long waits in hospitals. Did your study indicate that the Indian people were concerned about long waits and were concerned about inattentiveness, particularly when they had problems which were of an emergency nature? For example, I believe somewhere in your study there was an indication about a woman who had been bitten by a dog.

MS. KEKAHBAH. Yes, that was a consistent complaint of the Indian people within the public health clinics, and in particular at BCMC. Almost everyone that we did interview there complained of that. This was already stated this morning—that they felt that other people were taken before they were.

MR. POWELL. What about the— Sorry. Go ahead.

MS. KEKAHBAH. I was just going to say that I think probably at BCMC the problem is probably more pressing; and I think, you know, this hasn't been stated as such, but I think it has to do with—this is my feeling—just basic prejudice on the part of the people, the professionals and the clerks, that work there concerning Indian people.

This particular lady came in with her son who had been bitten by a dog at 10 o'clock in the morning and was not seen until 3:30 in the afternoon. And anyone knows that a dog bite requires immediate care—or should.

And she waited. And, finally—well, I was there just to observe and to interview some people—and finally I went up to check on it at 2 o'clock in the afternoon. She had been there since 10. And I was told at that time, "Oh, no, she's just been waiting 30 minutes."

Well, what happened was that the clerk decided not to fill out the initial form for that boy to get care until 1:30, so as far as the professionals were concerned— And I don't know what this is due to, whether it's just basic prejudice on the part of the clerk or the whole attitude that is passed down throughout the hospital or a combination of these things. But the thing is that a young Indian boy about 5 years of age was sitting there for that period of time with the dog bite.

MR. POWELL. On this sort of attitude, on the basis of your experience or in the course of your study, did you reach an impression regarding whether Indians have a significant input

on these policies or have any influence or control with respect to the way health services are administered?

MS. WILLIAMS. We approached this from a systems analysis. It might be difficult to go into verbally. I think that the theory of consumer involvement is in Indian Health Service, but I don't see the practice being that much. In fact, the majority of the deliverers themselves stated that they didn't think that Indian people had much to say about their health care.

Now, there have been attempts like the advisory board on the area level. These people are very dedicated people, and they have made many inroads. But it seems like the problem is—like it has to go up to the area office, be discussed, and directives come back down from the area office.

Now, if something could be set up more on the service unit—I know that Albuquerque does have these type of setups, but this is atypical, and we could go into examples of how that is misused in itself. But there needs to also—in addition to the area level—there also need to be some kind of feedback mechanisms between the community, between the deliverers of health care and the consumers on the spot.

Earlier you were asking Mr. Chino about just firing a physician. But, you see, that doesn't do any good, because the only thing we would be doing is kicking one doctor out after another. We want them to work there. We want them to stay there and perform their duty.

I think that if it was set up somehow—the advisory board and the governors would have to figure it out—but somehow on the service unit where confrontation could be had immediately—not immediately, every week or something, and specific examples attacked.

MR. POWELL. Regarding the question of input by Indians, are there sufficient funds made available to the Indian Health Service to allow for options of whoever makes the decisions?

MS. WILLIAMS. Of all the major problems, I feel like lack of funds is probably one of the most drastic coming down from—And I don't understand it. I really don't, especially in light of the President's recent statements on Indian self-determination.

But you can't—Indian Health Service or the Indian people—nobody can build a good system if they don't have the basic blocks there to build it with.

MR. POWELL. What about the question of preventive medicine and health education? Do Indian Health Service professionals do enough in this area?

MS. WILLIAMS. I think, again, it's very lacking. Traditionally,

I think one of the best professions that would tend to look more towards health than towards disease is the people like the public health nurses and nurses who are kind of health-oriented, but they don't have time. Like in one community in one outpatient clinic there was one R.N. She didn't have an L.P.N. to help her give injections. So the only thing she was able to do was run around giving injections and physical care, things like that. She was very frustrated. The people were very frustrated. There was no time to give well baby clinics, prenatal clinics, no time for anything like this. And then she couldn't talk to the people, and the people couldn't talk to her. It was just being rushed through.

MR. POWELL. What did you find either on the basis of your experience or in your study about poor medical practice? You mentioned some of that earlier, but was there an instance involving a young boy who had a foot that had been cut?

MS. WILLIAMS. Yes, there was a young man and—well, his sister came to a friend of mine and said that she was concerned about her brother and that she was afraid he was going to commit suicide. And she said, you know, "What's going on?" And she said, "Well, they told him at Gallup they're going to have to amputate his leg."

He was a young boy. And so this friend of mine said, "Well, before you have that done, take him to a private doctor even though it might—it will cost you money, and we could find the money somehow."

And so—and this boy had been treated for several weeks at Gallup. So he went to a private doctor, and the private doctor said that there was no reason for the amputation.

There was another incident in another community in which this older man went to the doctor, and he said it was the flu, and he was sent home. He came back, and he said it was flu and he was sent— This happened three times. Luckily, the CHR [community health representative] was also an R.N., and the problem with the man—he was vomiting blood. He had blocked tar stools, had a bleeding ulcer. And she took him into Albuquerque.

There was another incident in which this lady thought that she was pregnant. She went to the clinic, and they said she wasn't pregnant. She went back three or four times, and they said she wasn't pregnant. And by the fourth month they said that she was pregnant, but then that prevented her from receiving prenatal care, which might say something about our high incidence of infant mortality.

MR. POWELL. Was there a case with which you are familiar involving misdiagnosis of glaucoma?

MS. WILLIAMS. Yes. And, in fact, the lady has had two operations now. It was last summer. She went to the clinic and she was having problems with her eyes, and she told the doctor, and he said there was nothing wrong with her, that she was—it was psychosomatic—and sent her away. So she again had to go to a private physician, and he told her that if she didn't have immediate treatment she would go blind.

COMMISSIONER MITCHELL. Can I just interrupt here to clarify that? Glaucoma is an illness for which an ophthalmologist tests by dropping something on your eyeball that measures tension?

MS. WILLIAMS. Yes. You just put a little machine there.

COMMISSIONER MITCHELL. That test takes 5 seconds.

MS. WILLIAMS. Yes, sir.

COMMISSIONER MITCHELL. And the test was never made on her?

MS. WILLIAMS. No, sir.

COMMISSIONER MITCHELL. Wouldn't there be an automatic indication with her kind of complaint that someone should perform that kind of a test?

MS. WILLIAMS. Well, I would think so. The books indicate that. I'm not a doctor, but the books do indicate that.

COMMISSIONER MITCHELL. Is it possible that only ophthalmologists do it and the doctors wouldn't want to or—

MS. WILLIAMS. I don't understand your question.

COMMISSIONER MITCHELL. Well, there's a union, you know. The doctors don't test eyes and the eye doctors don't look any lower down than your nose and all the rest of it. Is that a possible reason?

MS. KEKAHBAH. I suppose that's possible, but I myself would think that it's more likely that it has to do with the basic kind of relationship that exists between the doctor and the patient within the Indian health system.

So many of the people that we interviewed stated that when they would go in and make complaints, you know, to the doctors, that many times the doctor would act like he didn't believe them. So, therefore, the Indian person might quit talking, you know, and just realizing that they are not going to get care and then just go on their way. And that was also a very big complaint.

COMMISSIONER MITCHELL. Thank you. Mr. Powell, I'm sorry.

MR. POWELL. It's quite all right. I just have a couple more. Would either one of you care to comment as to whether the

Indian people with whom you have talked feel free to talk to doctors about their symptoms and problems?

MS. WILLIAMS. I think that's very interesting. Those of you who have read the literature about Indian health, it's usually written by non-Indian professionals, and frequently it comes up in the literature that Indians are reluctant to describe their symptoms. Anthropologists and health professionals have made all kind of bizarre interpretations of this behavior. But, yet, when I asked the Indian people, questioned them about this, they said: "They don't listen to us. They act like we're lying to them when we tell them what's wrong with us."

This one woman had a temperature, a fever, at night, and then she goes in and she tells the doctor and the nurse, "I had a fever of 102 last night," and they just said, "Well, you don't have it now." You know, this type of thing. They don't listen.

Over and over again the people said, "They act like we are lying to them." And they said, "Now, why would we lie about something like that?"

MR. POWELL. Do you think this is a reflection of the doctors' training and background? Are doctors by training and background likely to view health problems from the point of view of the patient?

MS. WILLIAMS. It's changing. I see different trends. That's very difficult to answer.

MR. POWELL. Particularly in light of the cultural differences of most doctors who are non-Indians and the Indian patients?

MS. WILLIAMS. I think that you could make a distinction there.

MR. POWELL. You mentioned earlier about the problem of a boy who was to have his leg unnecessarily amputated. Was there another case involving a young boy in an emergency room with his father, that had a cut foot?

MS. WILLIAMS. This was again at BCMC. The boy came in with his father. The father was carrying the boy, and his foot was bleeding. And so he sat down and waited for about 5, 10 minutes, and a nurse came out and didn't say anything to the boy or the father, looked at the foot, and then dropped it back down, and, you know, just dropped it again.

She left, and then about 5 minutes later here came a doctor, a lady doctor, and she picked up the foot, didn't say anything to the father or the child, dropped it back down in the same position and walked off.

And then the patients waited for a little while, and then they left.

MR. POWELL. Mr. Chairman, we have a copy of the report to

which you referred. At this point I'd like to have it entered into the record.

The BIA officials have a copy of that report and will be prepared to discuss the findings.

COMMISSIONER MITCHELL. Let the record show it has been ordered into the record.

[Whereupon, the document referred to was marked as Exhibit No. 6 and received in evidence.]

MR. POWELL. Have you discussed your study with the Indian Health Service people here or in Washington? And if so, do they appear willing to make any necessary changes?

MS. WILLIAMS. The people at Albuquerque have already begun to use the study. They have used it as a basis to begin bringing about necessary changes. They sent us a copy, and then I found out that possibly they'd like for us to come as consultants. I think that points up the need of these type of studies. However, other areas view this more—instead of as something to work on and to base further research and to bring about change—they seem to see it as a threat to themselves.

I did present it to Rockville. We presented it to Rockville, Maryland. And they said they were going to do something, but they haven't yet that I know about.

MR. POWELL. I see. The reaction in Washington was— You haven't heard? Rockville, Maryland?

MS. WILLIAMS. In fact, in relation to that, I don't understand it, but they have decided to do a total evaluation of the country. But, instead of using this study that's already there that would increase the validity of the total thing, they have decided to do it on a different scale.

MR. POWELL. They are not going to refer to your study at all in this new study?

MS. WILLIAMS. On this one they started out they are not, from what I last heard.

MR. POWELL. Mr. Chairman, I have no further questions.

COMMISSIONER MITCHELL. Commissioner Rankin?

COMMISSIONER RANKIN. I would like to ask either one of you, is it usual for nurses to be as critical of medical care and doctors as you two are?

MS. WILLIAMS. I don't understand what you're getting at. I think that this study, Commissioner, isn't directed toward the medical profession. The question is—

COMMISSIONER RANKIN. Not the study. I'm talking about your testimony. You gave instance after instance, didn't you?

MS. WILLIAMS. If you'd like to ask me about nurses, I could

tell you about them too.

[Laughter.]

COMMISSIONER RANKIN. I don't want to get in over my head on this.

[Laughter.]

I'm trying to lead up to a question is really what I'm trying to do. How many Indian nurses are there?

MS. KEKAHBAH. There's approximately 400 in the Nation.

COMMISSIONER RANKIN. And you represent them pretty well, do you, do you think, in your testimony?

MS. WILLIAMS. I don't represent anyone but myself right now and the people who answered these questions.

COMMISSIONER RANKIN. And you go along with that?

MS. KEKAHBAH. Yes. I couldn't say.

COMMISSIONER RANKIN. Well, one last question. I thought you warned us about the danger of the *ad hominem* argument about using three or four instances to prove a general fact. Do you run afoul of that same difficulty in giving your testimony?

MS. WILLIAMS. I don't know. You could check over the statistics, and if you still have truck with it, then you could, you know, provide some monies to have it repeated and increase the sample size.

COMMISSIONER RANKIN. Well, in your opinion, you have proven the general point? Is that right?

MS. WILLIAMS. In my opinion.

COMMISSIONER RANKIN. Rather than just giving us six or seven instances? Is that correct?

MS. WILLIAMS. I think so, sir.

COMMISSIONER RANKIN. I'm just trying to get the record straight.

MS. WILLIAMS. Yes, sir, I think so, and I have had other consultants, you know, Ph.D. level researchers, concur.

MS. KEKAHBAH. Yes, sir, and in the study there is very, very much information in terms of tables, charts, I think, that say for themselves in terms of, you know, what we have been saying here today.

COMMISSIONER RANKIN. So, therefore, you would say if you haven't quite proven your point here that the study certainly proves it? Could I say that?

MS. WILLIAMS. I think so.

MS. KEKAHBAH. Yes.

COMMISSIONER RANKIN. Thank you.

COMMISSIONER MITCHELL. Mr. Buggs?

MR. BUGGS. Was this a national or a regional study?

MS. WILLIAMS. Albuquerque area.

MR. BUGGS. Albuquerque area? Did you make any recommendations as a result of your findings?

MS. WILLIAMS. Yes, we did.

MR. BUGGS. Could you tell us some of them?

MS. WILLIAMS. We recommended—you know, we were talking before about systems and feedback—to provide a better feedback on the service unit level. And, of course, the money. We need more allocations from Congress, and not only for the Indian Health Service but for Indian health in general. We need more health professionals, building blocks.

Right now I'm sorry I can't remember—

MS. KEKAHBAH. I think one other important recommendation was a better orientation.

MR. BUGGS. For doctors?

MS. KEKAHBAH. For the doctors and the nurses in terms of trying to lessen that gap, that cultural gap, that, you know, definitely exists and is shown in the data.

MR. BUGGS. Did you try to make any attempt or did you make any attempt to find out the per capita expenditure for public health services for Indians in this area?

MS. WILLIAMS. No, sir. We were working merely on the relationship patterns.

MR. BUGGS. Where do most of the physicians come from that serve the Indian population?

MS. WILLIAMS. Now, I can only speak for this study. According to this study it was varied. There were some from the Northeast, from New Jersey, some from Oklahoma, from various parts of the country.

MR. BUGGS. How were they recruited? Do you know?

MS. WILLIAMS. I think they had the option of—it was through the military service. They had the option of going into the United States Public Health or into the regular draft.

COMMISSIONER MITCHELL. I have just two or three questions. One is suggested by the work you have just finished. How much research is being done in this area? You finished a study that concentrates on a single area. What is being done in the field of relationships between medical services and Indians around the United States? Is this a well-worked research vein or are you pioneering in this?

MS. WILLIAMS. As far as Indians are concerned?

COMMISSIONER MITCHELL. Yes.

MS. WILLIAMS. To my knowledge, there's been nothing like this before.

COMMISSIONER MITCHELL. Would you think that there is room for much more in this area to be done?

MS. WILLIAMS. Yes, sir, very much more, and I think it should be done by Indians.

COMMISSIONER MITCHELL. Staying close to that, it's clear from some things that I have seen in the background to this testimony, and some things we have heard here, that Indians have—in some cases—special kinds of medical problems. Is there, in your opinion, adequate research being done in those areas?

MS. WILLIAMS. No, sir, not at all, especially in the area of suicide.

COMMISSIONER MITCHELL. Would you have recommendations along those lines? Where do you think that kind of research belongs?

Again, do you feel strongly that there is adequate medical strength in the Indian population to do this kind of research? Or would you feel that it should be done in cooperation with existing kinds of research facilities?

MS. WILLIAMS. Well, last week I just returned from the National Institute of Mental Health. We had a conference on Indian mental health. And out there I was really pleased to see that we have a growing number of Indian professionals. I think that, if they are looked for, they can be found. And I think that a lot of the research and a lot of health care can include paraprofessionals also. Does that answer your question?

COMMISSIONER MITCHELL. Yes, I think it does.

Now, there is just one other. Somewhere—and I have the advantage over the people who are listening because I have read many of the background papers leading to this hearing—there is reference to overutilization of clinics. Would you care to speak to that for a moment?

MS. WILLIAMS. Yes, sir. There were about four physicians who followed a typology—I hope you don't think I'm just talking bad about doctors because there were some things about nurses too. But there were four physicians who followed a typical typology. When we started talking about consumer involvement, they immediately started talking about things like socialized medicine and, "nobody is going to tell me how to practice medicine."

These same physicians, these four physicians, also made statements to the effect that: "Indians overuse health clinics. They overuse me as a physician. They come in here all the time with sore throats and upper respiratory infections. I spent a large amount of my time in professional training, and I'm interested in things besides bad colds. If these Indians had to

pay any money at all, they wouldn't be coming in here for other things. They'd go down to the corner drug store and get an aspirin, and they wouldn't be coming in here."

Okay. Then a public health nurse pointed out similar things. She said, "Frequently they come in with colds."

All right. A few years ago Public Health put a big effort to get the patients in the clinics at all because they weren't coming in at all.

Okay. Using health facilities of the white man is something that people learn, like all of you started learning it as little children when you started going to get your shots. It's something that is learned. And so if Indian people—and I saw the data from this one physician—so maybe they are coming in. But it's not because they don't need to pay for it. I think it's because of a lack of health teaching on the part of Indian Health Service to use these.

COMMISSIONER MITCHELL. So you think programs that would assist Indians in understanding how best to use these clinics would be useful?

MS. WILLIAMS. Yes, or just enough public health nurses to do their job.

COMMISSIONER MITCHELL. Thank you.

COMMISSIONER RANKIN. Is suicide a modern problem of the Indian? Or has it existed for years?

MS. WILLIAMS. I can't say for sure because I have read different things. Some of the things I have read is that it was totally unknown before—you know, in years before. Others I have read that it had cultural—that it was a cultural outlet, but it was for very extreme things, very extreme things, culturally. But also, the statistics that I am referring to, the suicide rate is 3 to 1 totally, and with boarding school Indian people it's 5 to 1. It also varies as to incidence. With the Indian population, suicide peaks somewhere between the ages of 12 and 24, and with non-Indians it peaks after the ages of 45 to 50.

See, we have a big problem because we are not really positive, sure, even where it is the highest. And if we even knew that, then it would give us something to go on.

COMMISSIONER MITCHELL. Well, thank you both very much. I wouldn't worry about being critical of doctors or nurses. It's just civil rights commissioners we don't like you to get critical about.

[Laughter.]

And, anyhow, now that you have criticized doctors and nurses, you come under the protection of the Commission, so you needn't worry about that either.

Thank you very much. I think you have been— I wish I could feel that there were organizations interested in supporting more research of the type you are both doing because I think it's in this kind of hard data that is incontrovertible, that is done by people who are sensitive to the situations they are studying and the people they are studying, where we are going to get answers to some of these problems.

The Indian health situation is really deplorable, and everything we have heard here suggests that. It's not even arguable. What is arguable is what is the right thing to do about it. And what you have demonstrated is that some funds spent wisely trying to understand both sides of that problem may very well contribute to an improved situation, and for that, as well as for coming here, the Commission is very much in your debt.

Thank you both.

MS. WILLIAMS. Thank you, Commissioner.

COMMISSIONER MITCHELL. Now we'd like to hear from the Indian Health Services themselves, and they will be represented here today by Dr. Kasumi Kasuga and Dr. Richard Light, who probably have their own feelings on whether it's nice to criticize Mother Nature or doctors.

[Laughter.]

You are Dr. Kasuga?

DR. KASUGA. Yes, sir.

COMMISSIONER MITCHELL. And you're Dr. Light, I know.

DR. LIGHT. Yes, sir.

COMMISSIONER MITCHELL. Gentlemen, would you let me swear you in, please?

[Whereupon, Dr. Kasumi Kasuga and Dr. Richard Light were sworn by Commissioner Mitchell and testified as follows:]

COMMISSIONER MITCHELL. I turn you over to Mr. Powell.

TESTIMONY OF DR. KASUMI KASUGA, DIRECTOR, ALBUQUERQUE AREA, INDIAN HEALTH SERVICE, AND DR. RICHARD LIGHT, DIRECTOR, SANTA FE SERVICE UNIT, INDIAN HEALTH SERVICE

MR. POWELL. Beginning with Dr. Kasuga, would you each please state your name, address, and present positions for the record?

DR. KASUGA. All right, sir. My name is Kasumi Kasuga. My position is Director, Albuquerque Area Indian Health Service. I live here in Albuquerque.

DR. LIGHT. My name is Richard Light. My address is in Santa Fe, New Mexico, and I am the Service Unit Director of Santa Fe Service Unit, Indian Health Service.

MR. POWELL. Dr. Kasuga, would you please briefly describe

your educational background and your professional experience, particularly as it relates to the Indian Health Service?

DR. KASUGA. All right, sir. I did my undergraduate and graduate work in medicine at the University of California. I was a resident physician in internal medicine and tuberculosis for 2 years. I was appointed instructor in medicine for 2 years following that. And since 1943, except for 5 years, I have been with the Indian Health Service. Of the 5 years, 3 years were with the Army and 2 years with the Bureau of Health Service and the Health Service and Mental Health Administration.

MR. POWELL. And the positions you have held with the Indian Health Service include?

DR. KASUGA. All right, sir. I was a tuberculosis officer. I was director of a hospital. I was the area director in Alaska. I was chief of program service and assistant director of the Indian Health Service in Washington. I was deputy director of the Indian Health Service. Then I became associate director of the Bureau of Health Service and deputy associate administrator for health services for the Health Services and Mental Health Administration. And now area director in Albuquerque.

MR. POWELL. Thank you.

Dr. Light, would you care to give us your educational background and professional experience?

DR. LIGHT. Yes. I have a bachelor's degree from Earlham College, Richmond, Indiana. I did my medical training at Vanderbilt, Nashville, Tennessee, and interned at Cincinnati General. I spent 3 years in Alaska as the director of the Barrow Service Unit and 2 years as a medical officer in Anchorage at the medical center. I then got out of the Service and spent 18 months in a surgery residency and 6 months in a State of Tennessee tuberculosis hospital.

I came back into the Service as service unit director at Kotzebue, Alaska; also at Bethel, Alaska. I was sent to the University of North Carolina in Chapel Hill, got a master's of public health, and then came to Santa Fe and have been there since September of 1970 as the service unit director.

MR. POWELL. Thank you.

Dr. Kasuga, would you briefly describe the services available to Indians through the Albuquerque area office of the Indian Health Service?

DR. KASUGA. Services available, sir?

MR. POWELL. Yes, the services available there. You get services from the Indian Health Service facilities direct, and I understand you have contract care. Would you care to briefly describe that?

DR. KASUGA. All right, sir. You wish for me to describe the health program of the Albuquerque service? Is that so?

MR. POWELL. Yes.

DR. KASUGA. We have the responsibility to provide health services to approximately 35,000 Indian people living in New Mexico, excluding the Navajo chapters of Shiprock, Crown Point, and Gallup. In addition to that we provide services to the Ute Mountain and Southern Ute tribal members in southwest Colorado.

We have four hospitals within the area, one at Santa Fe, one at Albuquerque, one at Zuni, and another one at Mescalero. In addition to that, we have six health centers, two of which are school health centers. These are located at Taos, Dulce, Ignacio, Laguna, one here in Albuquerque Indian School, and another one at the new Southwest Polytechnic Indian Institute. In addition to that, we have approximately 17 what we call health stations through which we provide intermittent services.

These are the direct care services facilities that we have. In addition to that, we have contract arrangements with various private and community hospitals throughout the State and in Colorado, and with approximately 400 doctors throughout the area.

MR. POWELL. In connection with the so-called contract care, where Indians receive medical attention at private hospitals, we have heard some discussion about eligibility. An Indian who walks into one of these hospitals, even if it's an emergency case, can't receive immediate attention. They must first make a phone call.

Would you care to comment on that and the reason for that? And is there any reason that can be avoided, particularly in the case of emergency?

DR. KASUGA. Yes, sir. In the case of emergency we do not require that any phone call has to be made to the responsible hospital or doctor who is in charge of the contract medical care of what we call the service unit. The care should be provided immediately and the arrangements to be paid, or not to be paid, be solved later.

MR. POWELL. If it is a question of pay, is it a problem that the private hospital, especially, might not be willing to give service, or is it required to give service?

DR. KASUGA. They are required to give services under emergency situations.

Now, the other question, sir, regarding how do we decide: we have two limitations as to our contract medical care program.

One is the money, and the other is the eligibility.

Because of the limitation of money that we receive from Congress in providing contract medical care, we must have a certain list of priorities developed within the service unit, and this priority of service is developed in conjunction with the service unit advisory board. Now, in all of our service units we provide contract medical care to those people who live on the reservation or are on the roll of that reservation tribe who might live away from the reservation but close to it. This is the first priority. Second is an emergency situation for any transient Indian who might be going through the area, that suffers heart attack or auto accident or so on, will receive care under the contract medical care program.

Beyond that, regarding elective procedures—and the elective procedures mean procedures that do not need immediate attention, that can be delayed for some time—in these situations it is dependent upon the amount of money available whether we can provide the kind of care to the outsiders, that is, the Indian people away from our own individual responsible area.

MR. POWELL. If I understand you, you are not saying that there is anything in the law pursuant to which health services are given to Indians that limits the extent of services and the number of people, whether they live on the reservation or not? It's simply a question of money and these priorities are based upon funding and not on the scope of the law? Is that correct?

DR. KASUGA. That's correct, sir.

MR. POWELL. You mentioned elective procedures. Particularly in the area of surgery, would you care to explain what you mean by "elective?"

DR. KASUGA. All right, sir. A person might have a tonsil that might need to be removed, or gall bladder that might or should be removed, but these two procedures may not have to be done today but can be delayed for a week or two or three, a month or several months.

MR. POWELL. Would the need for an operation having to do with glaucoma come under elective procedure?

DR. KASUGA. It is in a sense, yes.

MR. POWELL. Hernia?

DR. KASUGA. Yes.

MR. POWELL. But these procedures, from the standpoint of good medical practice, should be done? Is that correct?

DR. KASUGA. Yes, sir. Yes indeed.

MR. POWELL. But because of the funding limitations you put them off where you can?

DR. KASUGA. Yes.

MR. POWELL. Is that correct?

DR. KASUGA. That's correct, sir.

MR. POWELL. Do you think that the Indian Health Service ought to be reduced to making such elections? Or do you think there should be sufficient funds so that where these things are needed to be done they are done?

DR. KASUGA. We will hope we will have sufficient funds so that we could take care of these things immediately.

MR. POWELL. We have heard testimony earlier, Dr. Kasuga, about a communications gap between Indian Health Service professional staff on the one hand and Indian people on the other. In your opinion are there communications problems between Indian Health Service professional staff and patients? Would you explain?

DR. KASUGA. I'm afraid to say that there are. Of course, the nurses' study, Ms. Williams' and Ms. Kekahbah's study, has indicated this.

We ourselves have known this, those of us who are in the management area. We have tried our best to establish closer communications between the patient and the doctor, but also including the community. I believe the service unit advisory board and area board have done some of this for us. But I also believe that there are many areas of improvement that we could look into.

MR. POWELL. For example, there has been some discussion and testimony about the Indians' feeling that when a doctor examines them they should touch them more. Do you suppose that, even if it is not required that there be physical contact, that it would be a good idea for doctors to take note of this fact and engage in such practices if for no other reason than to relate more to the different attitudes and perceptions and cultural approaches of Indians? Would you care to comment on that?

DR. KASUGA. Yes, I believe that, unless the teaching of medical students has changed since I went to school, a good examination of the patient is an absolute necessity. Just talking to a patient is not adequate to come to a diagnosis or a possible impression of illness and to provide the best care to that patient. And this is certainly a surprise. I have heard this recently, and I have discussed this matter with some of our doctors, and hopefully this type of a practice will not continue.

Now, there might be an occasion where the illness or injury might be so obvious that you may not have to do that, but I

would think that this would be an exception rather than the rule.

MR. POWELL. So you would say that not only from the standpoint of the perceptions of Indians but from the standpoint of good medical practices the doctor has to feel and to look?

DR. KASUGA. Yes.

MR. POWELL. I see. There has been some question about Indians who have the flu or something of that kind. They come in and they don't get shots. There seems to be a dichotomy here between the view of Indians that everything is going to go away if they get a shot as opposed to the medical view that indicates in some cases you should just go home and take a nap and that a shot would be contraindicated.

Would you care to comment on that? And can anything be done to eliminate that communications problem?

DR. KASUGA. Yes, sir. I have met with many Indian tribal councils and individuals, chairmen of committees, and so on, and very frequently this complaint about patients going to our doctors who are often diagnosed as having upper respiratory infection and usually a doctor prescribes aspirin, fluids, and bed rest, and stay home— And this is the usual advice that most of our doctors give to persons who might be suffering from a simple cold.

Now, I'm talking about simple colds. I'm not talking about the situation such as Mr. Chino had described.

The patients often feel that this is not adequate treatment, and they go home and stay for 2 or 3 days at home. The temperature might stay up for a little, and the symptom does not subside, and, therefore, they get a little bit discouraged, and instead of coming back to our own doctor they may go to a private doctor nearby, and, usually, the private doctor—I won't say usually, but very frequently—the outside doctor might give the patient a shot, and this patient goes home and feels better.

The patient was given a little bit more attention. The shot is usually penicillin. And in about 2 or 3 days after that they are over their cold.

Now, we know from experience, and I think you all do, that usually a simple cold takes about a week for us to get over, whether you go to bed and take a lot of fluids and aspirin or you stay home and take it easy, you stay up and keep warm. It doesn't make a lot of difference. But because this patient did get this shot, he felt that he had special attention and that that shot cured him, and our doctors did not do this.

But really, when you look into this from a scientific standpoint, penicillin doesn't help the cold virus unless they have a type of a germ that is sensitive to penicillin which is causing this trouble. Then penicillin is of no use. Usually this is the story. And I believe our doctors, instead of explaining a lot of times why they do certain things, they just tell the patient what they have, what to do, and then send him home, and this might be the communication difficulty that we have.

MR. POWELL. Other than the fact that penicillin in many cases wouldn't help, are there reasons why it might hurt to give penicillin shots?

DR. KASUGA. Yes, it might hurt. Yes indeed. It might hurt because this may create some resistant organism, and later on penicillin will be not effective for that type of a germ.

MR. POWELL. Dr. Kasuga, what is the procedure followed when the Indian Health Service cannot provide treatment at its own facilities?

DR. KASUGA. For those people that we are responsible to?

MR. POWELL. Yes, for Indian people.

DR. KASUGA. We usually refer these patients to either a contract doctor or contract hospital.

MR. POWELL. I see. We mentioned earlier this business of elective procedures, and you indicated that often glaucoma—that the need for procedures relating to glaucoma, gallstones, or hernia are deferred. Do you believe that there are a number of Indian people who have need for such operations whom you don't see?

DR. KASUGA. Yes. Oh, absolutely yes.

MR. POWELL. Okay.

DR. LIGHT, you are the chief doctor at the Santa Fe Indian Hospital. Is that correct?

DR. LIGHT. I am the service unit director for all of Santa Fe Service Unit.

MR. POWELL. Has there been increase in the use of Santa Fe Indian Service Center in the past several years?

DR. LIGHT. Quite a tremendous increase. The outpatient department has tripled since 1965, the number of people coming in. The inpatient number of admissions has gone up by over 50 percent since 1968.

MR. POWELL. Has there been an increase in staff commensurate with the increase in service? Would you care to comment?

DR. LIGHT. No, there hasn't been. We have gone from two doctors in 1965 to five doctors now, but really no other increase in staff.

MR. POWELL. Two doctors to five? From two in 1965 to five now? How many additional doctors would you need to provide the same amount of service as you were providing in 1965? How much has the service increased? Per doctor? If you were to give the same service, how many doctors would you need today?

DR. LIGHT. In 1965?

MR. POWELL. You have five now?

DR. LIGHT. Yes.

MR. POWELL. But in order to have an increase consistent with the increase in the services, the caseload, the patient load, how many more doctors would you have to have would you say?

DR. LIGHT. Well, I think not necessarily physicians. One of the things we have added is the community health medic. Other paraprofessional personnel are needed.

MR. POWELL. I see. Do you feel services were adequate in 1965 with two doctors?

DR. LIGHT. No.

MR. POWELL. They weren't adequate then, and they are not any more adequate or less adequate now? Is that correct?

DR. LIGHT. I'd say they are not adequate now, not for the total load.

MR. POWELL. I see. Does this lack of sufficient professional personnel result in staff rushing through examinations on occasion?

DR. LIGHT. Yes. With the increased load and more patients to see per person, whether it's a doctor or nurse or medic or whatever it is, people get seen faster.

MR. POWELL. Is the Santa Fe Indian Health Unit accredited?

DR. LIGHT. No, it is not.

MR. POWELL. When and how did it lose its accreditation?

DR. LIGHT. The accreditation— It was first accredited in 1951 and lost its accreditation in February of 1971.

MR. POWELL. Why did it lose its accreditation?

DR. LIGHT. Three main reasons were the structure itself, the lack—

MR. POWELL. The physical structure?

DR. LIGHT. The physical structure itself. The lack of ancillary personnel, nurses, etc., were the main reasons.

MR. POWELL. What was the problem with the physical structure? In what respects was it deficient?

DR. LIGHT. It was built in 1928. It has wood floors. It has two big 12-bed wards. Again, it was built for medicine practiced in

1928. It's just not commensurate with practice of 1972.

MR. POWELL. And ancillary personnel? Would you care to comment further on that—lack of?

DR. LIGHT. Lack of nursing personnel and other housekeeping personnel, etc.

MR. POWELL. Is there anything short of a new facility and increased staff that would enable the hospital to regain its accreditation?

DR. LIGHT. Not that I know of.

MR. POWELL. Do you have physicians in the hospital on a 24-hour basis?

DR. LIGHT. Not physically in the hospital. They are on 24-hour call. There is one officer of the day each day.

MR. POWELL. Would you care to explain how that works?

DR. LIGHT. There are physicians there physically between 8 and 5, and then between 5 in the afternoon until 8 the next morning at least one of the five physicians is on call and is near a phone, and we require that they stay so they can get into the hospital within 5 to 8 minutes.

MR. POWELL. If they are called by a nurse on duty?

DR. LIGHT. They are called by a nurse on duty and respond to that call.

MR. POWELL. Do you ever have problems with doctors getting to the hospital within that 8-minute limitation that you place?

DR. LIGHT. Very rarely.

MR. POWELL. You heard, I believe, testimony earlier regarding an instance in which, I believe, a young lady was brought. The mother had called in advance. She took 20 minutes to get there. And when she got there the doctor wasn't there.

Would you care—Is this an isolated instance in your view or does this happen fairly often? And if so, why?

DR. LIGHT. I don't think it happens very often. I really don't know whether the call—As I understand it, the call came from the mother to the hospital. It probably was received by a nurse. Whether she turned around then and called the physician at that point in time or waited until the patient came in, I really don't know.

MR. POWELL. Why would she wait until the patient came in if the patient thought it was such an emergency that she wanted to call in advance, the thought being that she would like to have a doctor there when she got there to handle the emergency?

DR. LIGHT. Sometimes the patients don't always end up

where they are starting out for, and they may have gone either to St. Vincent's or somewhere else in the meantime.

MR. POWELL. You heard the earlier testimony regarding the other cases at the Santa Fe Indian Service Unit. Would you care to comment on any of those?

DR. LIGHT. I don't really see how I can without having seen the specific charts or seen the patients professionally myself. It would be very hard to comment on the situation.

MR. POWELL. Dr. Kasuga, is the Indian Health Service playing as large a role as it could and should in the area of health education?

DR. KASUGA. I'd like to qualify that statement if I may. We are trying to do the best we can with what personnel we have. Now, the health educator alone is not doing all the health education. Health education is teamwork. It involves many other disciplines such as the public health nurse, the dentist, the nutritionist, the dietitian, the regular clinic nurse, and so on.

However, we do not have enough staff members to do the kind of health education involving the patients, the community, and so on. And if you ask me are we doing an adequate job, I must say that we are trying our best but not the kind that we like to do.

MR. POWELL. You don't feel you are getting enough funding in this connection? Is that correct?

DR. KASUGA. We only have five professional health educators, and this is one problem, yes.

MR. POWELL. We have heard testimony on this high suicide rate among Indians.

DR. KASUGA. Yes.

MR. POWELL. What, if anything, is the Indian Health Service doing about this?

DR. KASUGA. Congress has been very helpful to us within the last 2 or 3 years, and they have given the Indian Health Service money and positions in the mental health area.

For instance, since 1969 we have gained six professionals in the mental health area, and within the last 2 years we have gained 11 mental health coordinator positions. These people are assigned to the field and work in many areas pertaining to mental health. Now, suicide is one. Drugs might be another. Alcoholism might be another. Individual emotional difficulties might be another. But this is an additional effort on the part of Congress and Indian Health Service to attempt to do something about these various areas.

MR. POWELL. In terms of the maximum, most feasible em-

ployment of limited resources, are there any personnel or resources that are used in the area office that might better be used in the field?

DR. KASUGA. There might be, yes, sir.

MR. POWELL. Do you look at that sort of problem?

DR. KASUGA. Yes, we do.

MR. POWELL. Do you take into account the views of Indians, particularly those on the Indian advisory board, in that regard?

DR. KASUGA. Well, we have not discussed this to date yet, but we have among ourselves discussed the possibility of what discipline and which person might be more effectively assigned to the service units rather than staying in the area office, although most of our consultants in the various disciplines spend an awful lot of time in the field rather than in the area office, so it's a matter of assigning their desk someplace else really. But we have considered this, yes.

MR. POWELL. Dr. Kasuga, are Indians who do not live near major Indian Health Service centers receiving quality care? Are there facilities— If Indians don't live near major Indian Health Service centers, do they receive quality care?

DR. KASUGA. Are you— I'd like to ask—

MR. POWELL. I take it if they don't live near an Indian Health facility—

DR. KASUGA. Such as Albuquerque or Santa Fe?

MR. POWELL. —there are transportation problems, I take it.

DR. KASUGA. We have two ways of trying to provide quality care, and that is if you take Dulce, for instance. Mr. Velarde this morning testified he comes from Dulce; we have two physicians there. These physicians are two young doctors who also provide some care to the Southern Ute Reservation which is around 100 miles away. Now, it's rather difficult for any other specialists, for instance, to provide high quality care in such an isolated location.

In order to compensate for this, if the doctors feel that they need specialty care, they will be referred down to Santa Fe where Dr. Light is, and in this way we try to provide good care. That is the only way we can do it.

MR. POWELL. The testimony has indicated and our investigation indicates that almost all the doctors with the Indian Health Service are recruited through the doctor draft and that this draft is going to end in mid-1973. What is the Indian Service doing to take care of the problem which will exist after July 1, 1973? Would you care to comment? What can it do?

DR. KASUGA. Yes, sir. Dr. Johnson, Emory Johnson, who is

the director, appointed a task force about 6 or 7 months ago headed by Dr. Rabeau who was director for some 6 years or so, and they have met on two or three occasions and have come up with various practical recommendations.

The four major areas that they have touched upon are: One, Indian involvement in recruitment and retention of physicians. The second is how do we try to recruit? And this is our part. Third is how do we try to retain doctors? And fourth is to try to come up with some recommendation in improving the health service system so that doctors might be willing to stay and work.

Now, various recommendations were made within these four major categories, and costs identified as to implementation of some of the recommendations. But so far the main steps taken:

Number one, the headquarters office of medical service has sent out information on the Indian Health Service to every one of the medical schools and every one of the interns, as a matter of fact, throughout the country, and I heard just a few days ago that we have had many inquiries regarding possible interest in serving us.

Now, for the coming year starting July 1, 1974 [sic], we here in the Albuquerque area fortunately will have enough doctors to replace those who will be leaving, and we have confirmation on this. So for the fiscal year 1974 we feel that we will have enough doctors.

Now, beyond that I am not sure, except that we will follow through on the task force recommendation. I'm sure that the headquarters office will discuss this matter at their hearing and hopefully that we will have a substantial amount of funds to do the type of things that we like to do.

MR. POWELL. Dr. Light, how much orientation are Indian Health Service doctors given with respect to traditional Indian beliefs about medical practice?

DR. LIGHT. We are trying to do more and more. With the cooperation and the tremendous input of the Santa Fe Service Unit Advisory Board, for the last 2 years—in other words, July of 1971 and July of 1972—the advisory board has spent several hours with the new incoming personnel in going over Indian traditions, beliefs, etc., and it has, I think, been quite an improvement. I don't think it has been as good as it should be, and I think it will improve as years go by.

MR. POWELL. Would either one of you care to comment as to the role the Indian advisory boards play in determining Indian Health Service policies, focusing directly on funding and such things as that—deployment of resources, the need to orient

medical staff more about the cultural attitudes of Indians, the need to educate Indians as to why doctors do and do not do certain things? What role do the Indian advisory boards play in this connection?

DR. KASUGA. Maybe I'd better start with the area advisory board. The area advisory board is a board established to be available to help me make certain decisions regarding the entire Albuquerque area program.

Regarding budgeting, allocation, and that type of involvement, it is rather difficult in that— I mean their involvement is rather difficult in that we do get set amounts of money from headquarters, through Congress and then through headquarters, and it's usually fairly well identified by activities. In other words, they will say so many dollars for hospital health, so many dollars for field health, so many dollars for contract medical care, and so many dollars for area administration, and so on. And to change this, there is not much leeway.

So in that area the input from the advisory board is not great. Where the advisory board is very, very helpful to us in the area office is in developing certain policies or changing policies, sometimes developing the eligibility criteria or priorities, and in that area the advisory board has been extremely helpful to us.

The other thing that I would like to mention in regard to the advisory board is that the Indian Health Service policy is to improve and perhaps push for more and more Indian involvement, and eventually perhaps the Indian government, whether it's a Pueblo tribe or whether it's a group of Pueblo tribes or one tribe, that perhaps may eventually take over and accept the responsibility of operating the health program, and this is the ultimate goal. In that regard we have had some training sessions in health management for Indian leaders; not enough to get to this goal too fast, but we are attempting to do this.

MR. POWELL. Dr. Kasuga, our investigation and the information you have provided indicate that Indians constitute about 70 percent of the GS employees overall on the local Indian Health Service. Yet they number only 23 percent of the employees in grades 9 through 15, and almost 90 percent of those in grades 5 and below are Indian. Could you explain why this is the case and has the situation improved since you've been here?

DR. KASUGA. Yes, I would very much like to give you a copy of the change within the last at least 2 years, but may I say in general that Indian employment, number one, has increased

approximately 20 percent in the last 2 years, and there has been a substantial increase in grade advancement of the Indian employees. I cannot give you the exact number very quickly, but I would very much— I would be happy to submit to you a copy of what has happened in the 2 years.

MR. POWELL. If you give it to us, we will make it a part of the record.

COMMISSIONER MITCHELL. So ordered.

[Whereupon, the document referred to was marked as Exhibit No. 7 and received in evidence.]

MR. POWELL. Dr. Light, how many of the Santa Fe Service Unit staff are Indian?

DR. LIGHT. We run approximately 66 percent Indian.

MR. POWELL. Sixty-six percent? And the total staff is how many? What is the number?

DR. LIGHT. Roughly 120.

MR. POWELL. How many of those Indians are in supervisory positions?

DR. LIGHT. We have three.

MR. POWELL. Three? To what do you attribute such a low number in supervisory positions?

DR. LIGHT. Mainly being a highly professional group of people, the lack of professional qualifications.

MR. POWELL. Dr. Kasuga, we have heard testimony that many Indians feel they wait, as you have heard, longer to see physicians at the Bernalillo County Medical Center than non-Indians. Do you believe there is any basis for this belief?

DR. KASUGA. I believe there have been instances of a long wait, and so on, and I personally have observed one such situation. But every time we do have such a complaint either someone from my office, or the service unit director of the Albuquerque Service Unit, Dr. Bedingfeld's office, or he himself, investigates these complaints, and if the situation is true we ask them to correct the situation.

Sometimes it might be a misunderstanding. They might have to wait for some lab report to come back and this has not been explained, and so on. But I believe it does happen every now and again. And we do look into it.

MR. POWELL. Do you think your contracting power with BCMC gives you any leverage in this regard?

DR. KASUGA. The only leverage we have would be not to send patients there and send patients to other contract facilities.

MR. POWELL. Dr. Light, we have heard allegations that Indian Health Service doctors do not take seriously enough complaints by Indian patients. What is your response to this?

DR. LIGHT. I don't think this is a generality, no. I think that part of it may be due to the lack of communication, the understanding on both sides of: one, what the problem is; two, what treatment really has been prescribed. Part of it is also due to the workload and the number of people that have to be seen in a specific period of time.

MR. POWELL. Except for the workload, you don't feel that doctors— You do feel that doctors do take into account what the patients are telling them?

DR. LIGHT. To the best of their ability, yes.

MR. POWELL. Are there instances since you have been with the Indian Health Service in which physicians have done an inadequate job? Are you familiar with any such instances?

DR. LIGHT. Nothing that's very gross on a situation, no.

MR. POWELL. Without going into whether it's gross or not, when there are such instances, though, what do you do about it? What is the—

DR. LIGHT. Usually counsel with the physician and actually try to talk with the patient who has the complaint on the situation and see if there isn't some solution.

MR. POWELL. Among the complaints we have heard in the course of our investigations, people have voiced the complaint that they are being "experimented on" by Indian Health Service doctors. Is there any basis for this?

DR. LIGHT. None whatsoever.

MR. POWELL. Dr. Kasuga, do you keep a log on complaints made and disposition made thereof?

DR. KASUGA. Yes, sir.

MR. POWELL. You do?

DR. KASUGA. Yes, the Office of Tribal Affairs does.

COMMISSIONER MITCHELL. Mr. Powell, just a quick comment. I have not heard any complaint about experimentation. In the light of the high sensitivity that is felt about that particular allegation, I hope we are not just dealing in quick superficial—

MR. POWELL. I agree. I agree.

DR. KASUGA. May I answer that, Mr. Mitchell?

COMMISSIONER MITCHELL. Yes, please.

DR. KASUGA. I believe this pertains primarily to the BCMC—this is the Bernalillo County Medical Center—where the hospital is now run by the University of New Mexico Medical School. The staff of the hospital, then, is from the university. Now, they do have interns, residents, and medical students, and often it is the feeling of some of the Indian patients that anybody that might come over or look over the patients seen by the staff from BCMC—whether at their own facility which

is right next door or at BCMC—might be students and that they might be experimenting on our patients.

This complaint has come in not—more than once. I mean several times. And we have discussed this matter very carefully with the university staff and have refused any medical students even to come over to our hospital right next door to see our patients because of this complaint. The service unit advisory board is particularly very definite in regard to not having any students either examine or come over and take care of our patients. So this is probably where the complaint came from.

MR. POWELL. Dr. Kasuga, have there been any freezes on Government personnel which have been applied to the Indian Health Service? And if so, has patient care been adversely affected thereby?

DR. KASUGA. I'm sorry. I didn't get the first part of the question.

MR. POWELL. Have there been any governmental freezes that have applied to the Indian Health Service? And has that adversely affected patient care?

DR. KASUGA. Well, yes, there have been freezes on employment, and this has happened not only to us but practically all of the Government agencies. We try to replace those essential positions such as nursing positions that are needed to provide care to sick people and try not to fill those vacancies that could be left alone and not having too bad an effect on the delivery of service. So we do try to make some effort as to selecting the positions to be filled within the freeze.

MR. POWELL. Dr. Kasuga, in your opinion what standard of medical care should be available to Indian people?

DR. KASUGA. Well, I believe that the type of care that is provided to the average American community should be available.

MR. POWELL. And this should be available whether they live in rural areas or not?

DR. KASUGA. Yes.

MR. POWELL. Is this standard being met at the present?

DR. KASUGA. No.

MR. POWELL. No further questions.

COMMISSIONER MITCHELL. Thank you. Commissioner Rankin?

COMMISSIONER RANKIN. I just have a few questions that I'd like to ask about the source of funds. Dr. Light, do you have any sizable source of funds other than Government appropriation for the hospital?

DR. LIGHT. None whatsoever.

COMMISSIONER RANKIN. None whatsoever?

DR. LIGHT. No. All our funds come from Congress.

COMMISSIONER RANKIN. And you make out a budget each year, do you?

DR. LIGHT. Yes, sir.

COMMISSIONER RANKIN. And the budgets get larger each year?

DR. LIGHT. Not as large as we'd like to see them get. They do increase, but—

COMMISSIONER RANKIN. Do they cut you down or do you get as much as you ask for?

DR. LIGHT. No, the budget, although it has increased over the last few years, has barely even kept up with inflation on the situation, so that—

COMMISSIONER RANKIN. So you are really not holding your own—

DR. LIGHT. No, sir.

COMMISSIONER RANKIN. —as far as appropriations are concerned?

DR. LIGHT. No, sir, especially when you measure it against the increase in workload.

COMMISSIONER RANKIN. Is your staff force unionized?

DR. LIGHT. No, sir.

COMMISSIONER RANKIN. What would happen if they should have a hospital union? Where would you be?

DR. LIGHT. I really don't know.

COMMISSIONER RANKIN. You'd still have to ask for more funds possibly? Is that it?

DR. LIGHT. [Nodding affirmatively.]

COMMISSIONER RANKIN. You heard the testimony this morning. Do any of these criticisms that we heard come to you?

DR. LIGHT. Occasionally they come to me. I wish as director that more would be funneled through me because I think then we are closer to the scene and hopefully can do something about it.

COMMISSIONER RANKIN. How are they handled? If you don't get them, are they handled by others in the hospital? Or do you handle these complaints yourself?

DR. LIGHT. Most of them I haven't heard about. The ones I do hear about I handle directly myself.

COMMISSIONER RANKIN. Had you heard about these that were mentioned this morning?

DR. LIGHT. No, sir.

COMMISSIONER RANKIN. Can you set up any machinery to take care of this?

DR. LIGHT. We do have a machinery through the Santa Fe Service Unit Advisory Board, and we have had a number of complaints handled through that basis, and also people directly coming to my office or to other members of the staff.

COMMISSIONER RANKIN. I'd like to ask you a question, Doctor.

DR. KASUGA. Yes, sir.

COMMISSIONER RANKIN. Do you get all the money you want?

DR. KASUGA. No, sir.

COMMISSIONER RANKIN. Do you get near the amount you want?

DR. KASUGA. No, sir.

COMMISSIONER RANKIN. Well, does it all come out of a general fund for the Indian Service all over the United States?

DR. KASUGA. Yes, sir.

COMMISSIONER RANKIN. How do they determine how much you get here in New Mexico?

DR. KASUGA. We get our allocation from headquarters, and usually this is based on the historical needs and historical usage of our area, and depending on the workload that might have increased or decreased, and also special needs that we might identify that we go into headquarters with.

COMMISSIONER RANKIN. Are you satisfied with that method of determining the appropriation?

DR. KASUGA. You mean through Congress or through my headquarters?

COMMISSIONER RANKIN. Through your headquarters and where you make application.

DR. KASUGA. No, sir. There is a task force, sir, right now working on this special problem as to what would be the best way and on what basis each area office should receive the money; and they are developing some good criteria to be used, and this is in the process.

COMMISSIONER RANKIN. Just for a moment, imagine I'm President Nixon.

DR. KASUGA. Yes, sir.

COMMISSIONER RANKIN. And I say, "Doctor, how much money do you need in New Mexico? I'll give it to you." How much would you say?

DR. KASUGA. Mr. President, I can't say because I don't have the basis to say it at this moment, but if this is coming I'll certainly look into it, and I'll give you more information.

[Laughter.]

COMMISSIONER RANKIN. I wish you luck on that. I hope it works out.

DR. KASUGA. Because this not only involves the Indian Health Service, but I think involves the community and the Indian people. What we feel is a need, and the money to go for that need may not be exactly what the Indian people may think also. And I think we have to get together.

COMMISSIONER RANKIN. One last point. You don't think you are discriminated against in comparison with funds that go to Minnesota or go to South Dakota or go to other Indian areas?

DR. KASUGA. I don't believe so.

COMMISSIONER RANKIN. In fact, you do just a little bit better? Is that right?

DR. KASUGA. I'm not so sure about that.

COMMISSIONER RANKIN. Okay.

COMMISSIONER MITCHELL. Mr. Buggs?

MR. BUGGS. Just a few, Mr. Chairman.

Dr. Kasuga, \$750,000, I understand, is appropriated each year for contract services. Is that right?

DR. KASUGA. No, sir.

MR. BUGGS. Oh?

DR. KASUGA. Contract service, we get approximately \$2 million. I can give you exact amounts, sir, if you could just wait a minute. It's a little over \$2 million, sir.

MR. BUGGS. Does that include contract services?

DR. KASUGA. That includes the entire contract health service, yes, sir.

MR. BUGGS. I see. What about the budget for the rest of the services that are provided through your own facilities?

DR. KASUGA. We have a total of a little over \$11 million, sir. A million dollars of that takes care of headquarters activity such as running the automatic data processing center, running the licensed practical nurses' school, running the nutrition technicians' school, running the food supervisors' training school. That takes about a million dollars. And the rest then, \$10 million, is available for the operation of our health program.

MR. BUGGS. Dr. Kasuga, since the physicians come to service Indian clients as a sort of means of—I guess I'm right—of not having to go to the military and serve there, would it be accurate to assume that their hearts are not really in it?

DR. KASUGA. No, I don't believe that is true, sir. I think most of the doctors are interested in serving the Indian people. These people are not interested usually in serving in the military because they don't believe in war and taking care of

war casualties or participating in encouraging that type of a program. They are interested more in people and providing services where the medical needs are urgent, where needed. And I think a majority of the doctors who come to us come because of that.

Now, there are some certainly that come to us because they want to avoid the draft and serve the military, but I don't think this is the general rule.

MR. BUGGS. Have you ever used any VISTA volunteers?

DR. KASUGA. Yes, sir. Not ourselves. But they come onto the reservation.

MR. BUGGS. As physicians?

DR. KASUGA. No, no, not—

MR. BUGGS. Not as physicians?

DR. KASUGA. Not as physicians.

MR. BUGGS. Dr. Light, I was wondering how a doctor can get up at 2 o'clock in the morning, dress, put on his clothes, and get to the hospital in 8 minutes.

DR. LIGHT. Most of them live within about a 6- or 7-block radius of the hospital.

MR. BUGGS. Do hospitals usually have resident physicians on 24-hour service?

DR. LIGHT. I'd say, other than the big teaching hospitals around the country, most of them do not.

MR. BUGGS. Do they have interns on 24-hour service?

DR. LIGHT. Usually just the big teaching hospitals.

MR. BUGGS. So you're saying your hospital is really no different than the vast majority of such institutions around the country?

DR. LIGHT. Especially the hospitals of our size, yes, sir.

MR. BUGGS. Is there any way to explain some of the incidents that have been related here? For example, the brain tumor incident?

DR. LIGHT. It would be very hard for me to really be able to explain this without having access to the chart to see what really the interpretation of the physician was at that point in time.

Now, in a brain tumor case, symptoms can develop rather rapidly and be there an hour or two after they were not there before type situation, so I really couldn't say in this particular case.

MR. BUGGS. I don't have any further questions.

COMMISSIONER MITCHELL. I won't hold you too much longer, but there are one or two things that I have made notes on.

Dr. Light—maybe Dr. Kasuga is a better person to ask, but

I'll ask either of you—in the work of the Civil Rights Commission we are often told when we try to find out why more of the people from a particular minority group are not involved in professional services that it's very hard to find qualified people. Is there any program in existence that seeks aggressively to interest Indians in the study of medicine, provide scholarships, encourages them to go? Are there medical schools who are seeking people who are Indians to study medicine with a special concern for the medical needs of Indians?

DR. KASUGA. Yes, Mr. Mitchell, there is a Dr. George Blue Spruce, who is a dental officer from one of our pueblos here who is now assigned to the Bureau of Health Manpower under National Institutes of Health, and he is in charge of stimulating minority students to enter into the health field. He also has an assistant who goes out to the various Indian groups to stimulate interest in people getting into the health field. This is one thing.

We at the present time—and I heard this only yesterday—are somehow supporting the education of nine medical students throughout the country. Now, this may not all come from the Indian Health Service, but Public Health Service somewhere is supporting nine Indian medical students throughout the country out of 45. There are 45 medical students at the present time. There are 38 practicing physicians throughout the country—Indian.

COMMISSIONER MITCHELL. Are they largely in the Public Health Service or out of it?

DR. KASUGA. No, sir; only two are serving with us.

COMMISSIONER MITCHELL. The others are in private practice?

DR. KASUGA. Yes, sir.

COMMISSIONER MITCHELL. In largely Indian areas would you say?

DR. KASUGA. No, sir. Away from Indian areas.

COMMISSIONER MITCHELL. That, by the way, is also not an uncommon problem in developing professional services in areas like this.

Dr. Light or again Dr. Kasuga, either of you—Commissioners do a lot of homework before they come to a hearing. They read a lot more in the way of background papers and reports on interviews than often gets into the testimony.

One of the things that interested me is some allegation to the effect that some of the doctors in the Indian Health Service are very young, very unconventional in their habits—maybe the word “hippie” is a bad one but it occurs in the

background papers—that they have strange friends roaming around Indian medical facilities, that in some cases they themselves are so unusually dressed and mannered that they turn off the patients.

Is there any important truth to that or is that the kind of casual thing that one hears in isolated instances?

DR. LIGHT. We have had some of these. I think the way they seem to be coming out of medical school right now with their hair and beards, etc., probably less than the average is going into training somewhere. But we have had several instances where they have had strange people in clinics, and this has been stepped on pretty quickly when it was found out about. And we do try to counsel with them on their appearance and how this does affect their verbal or nonverbal relationships with the Indian people.

COMMISSIONER MITCHELL. So you're aware of this and you're taking some affirmative action?

DR. LIGHT. Yes, sir. And the advisory board spoke to this when we had our orientation session along these lines. Now, not all of them will cut their hair down to the butch haircut the next day.

COMMISSIONER MITCHELL. Now, Dr. Light, one of the things that we have heard here today, and you have heard, some of the things we have heard about the Santa Fe facility are quite extreme. My recollection includes the comment that one walks into that hospital and smells human waste as one walks through the door, that there are two bathrooms, that there is one bathtub. I think I'm accurately recalling the testimony.

Would you care to comment on those?

DR. LIGHT. I think from the standpoint of the two major bathrooms—and we now have two bathtubs—

COMMISSIONER MITCHELL. What is the difference between a major and a minor bathroom?

DR. LIGHT. Off the two main wards—there is one women's ward and one men's ward—with a multiple stool type of bathroom. On the OB service there are some singles. We do have two bathtubs.

I do take quite a bit of—against the idea of smelling “offal” when they come in the front door. I think our housekeeping staff does a fantastic job and that is the least that could be said about that hospital. I think of too many other things along other lines.

COMMISSIONER MITCHELL. In other words, you think that these comments are emotionally loaded? Or are they reasonably accurate?

DR. LIGHT. Only the one of smelling of human waste on the situation. The rest of them I think are true.

COMMISSIONER MITCHELL. So you're really inadequately equipped with bathroom facilities?

DR. LIGHT. Yes, sir.

COMMISSIONER MITCHELL. Tub facilities?

DR. LIGHT. Yes, sir.

COMMISSIONER MITCHELL. Well, I have no further questions.

MR. BUGGS. May I ask just one more?

COMMISSIONER MITCHELL. Yes.

MR. BUGGS. Dr. Light, do you have any Indians in the hospital who have any responsibility for receiving complaints from Indians who feel that they may not have been treated justly?

DR. LIGHT. We have the three EEO [equal employment opportunity] counselors. We don't have anybody specifically designated to receive consumer complaints other than the advisory board, which does a tremendous job along these lines.

MR. BUGGS. But they are not on the site, are they?

DR. LIGHT. No, sir. We do not have an ombudsman to speak of at the present time, no.

MR. BUGGS. Do you think it would help if you did? It would appear to me that Indians might feel a little more comfortable if another Indian was sitting there to whom they knew they could go and say, "I have got a complaint. I wasn't really treated quite well by . . ."

DR. LIGHT. I think it has proven its worth in other institutions. I wouldn't say it would probably be much different with ours.

MR. BUGGS. Would you be willing to try that?

DR. LIGHT. If I could have that position.

COMMISSIONER MITCHELL. Mr. Powell, who has been doing most of the cross-examination during this period, would like to make a closing statement. I know what he's going to say, and I believe that the Commissioners and the staff would want to associate themselves with his comments. But I yield to Mr. Powell.

MR. POWELL. I just want to say for the record that the staff has admonished me to point out that almost everyone they have talked to has indicated that Dr. Kasuga, as area director, has been most willing to listen to Indian people and to respond within the limits of funds and personnel to problems that have been raised. We have not heard any criticism of him in any way about his personal commitment to quality care.

That's it.

COMMISSIONER MITCHELL. Well, thank you. And I reminded Mr. Powell that in reading the records I heard or read some comment to the effect that Dr. Light has struggled manfully with an inadequate facility—and heroically.

I sometimes wonder what keeps you in the Public Health Service. It's an agonizing job. The customer is always unhappy and has a right to be in most cases or many cases, and you're underfunded and you can never hope to do what some doctors can hope to do, which is to sleep for one night in the knowledge that all the medical problems are under control and you're doing the best that modern medicine can afford.

Thank you both for coming. And I just want to assure you we have learned a great deal from our conversation with you, and I hope we will out of this be able to recommend some action that will improve the medical expectations and realities for Indians.

DR. KASUGA. Thank you, sir.

DR. LIGHT. Thank you very much.

COMMISSIONER MITCHELL. Now I think we'll give our stenotypist a 15-minute recess, and the Commission will take one too, so we will be back again at 10 minutes after 4 if you don't mind.

[Whereupon, a recess was taken.]

COMMISSIONER MITCHELL. Will the Commission's staff advise the people in the corridors we are about to begin?

Mr. Ernest Gerlach. Is he here?

[Whereupon, Mr. Ernest Gerlach was sworn by Commissioner Mitchell and testified as follows:]

**TESTIMONY OF MR. ERNEST GERLACH, STAFF MEMBER,
SOUTHWESTERN REGIONAL OFFICE, UNITED STATES COMMISSION ON
CIVIL RIGHTS**

COMMISSIONER MITCHELL. We have now concluded the testimony we proposed to hear at this hearing on health services, at least the scheduled testimony. As I have reminded you earlier, there will be time for unscheduled testimony in the last couple of hours of the session tomorrow.

And we, therefore, move on to the area of employment, private and Federal employment, which we will cover today.

We will have another recess at around 5:30, and then we will continue until 7:35 on this subject, with a series of panels, and we will preface that by having a summary of the employment report by Mr. Ernest Gerlach of the staff of the Southwestern

Regional Office of the United States Commission on Civil Rights.

Mr. Gerlach is on the stand. He has been sworn in. He has some visual materials. Now, they are going to be difficult for you to read. I don't know why all charts and graphs are impossible to read if you're sitting in the back row. But I would encourage you at any time during this presentation, if you feel like walking up to the edge of the platform here and getting a closer look at these charts, to do so. And I shall ask Mr. Gerlach to leave them up after he has finished and perhaps to display them tomorrow along the side of the room so everyone who really wants to see them can have a good close look at them.

I notice there are people standing in the back. I hope that is because you like to stand because there are seats in the front, and at your convenience please feel free to come forward and sit down.

Now I will turn the microphone over to Mr. Ernest Gerlach for a summary of the employment report for this area covered by this hearing.

MR. GERLACH. American Indians in New Mexico live in a state of economic underdevelopment and deprivation. More than any other minority group they suffer from high unemployment rates and very low wages. A majority of those Indians that are employed work on reservations. Usually this employment is of a sheltered type. That is, Indians are usually extended preference when reservation jobs are available. Despite this sheltered employment situation, considerable unemployment and underemployment among Indians exists on most of the reservations in New Mexico. On many reservations nearly 50 percent of the Indian work force is either unemployed or underemployed.

The BIA has estimated that in 1972 about 28,876 Indians in New Mexico, 16 years and over, were in the labor force. Of this total, 11,047 or approximately 38 percent are unemployed, and 5,229 are classified as underemployed. In contrast, the unemployment rate for the entire State was reported to be 5.4 percent in 1971.

Those Indians that are employed are usually engaged in governmental and related work. A large part of this employment is provided by the Bureau of Indian Affairs. For example, in 1971, the Bureau of Indian Affairs employed approximately 1,633 Indians in the State.

Employment of Indians in other sectors, such as agriculture,

construction, manufacturing, transportation, wholesale and retail trade is very limited.

In 1971 New Mexico State agencies employed 198 Indians out of a total State employment of 10,557. Only 20 State agencies out of 73 employed any Indians at all. The majority of those Indians employed by the State were concentrated in three agencies: the employment security commission, which employed 51 Indians out of an overall employment of 765; the health and social services department, which employed 46 Indians out of total statewide employment of 1,544; and the highway department, which employed 58 Indians out of a total employment of 2,742. Although Indians constitute about 7 percent of the State's population, they comprised only about 2 percent of the State employment in New Mexico as of December 1971.

In relation to private employment, Indians comprise only a very small part of the total work force in New Mexico. In 1970 the Equal Employment Opportunity Commission surveyed 466 businesses in New Mexico. These companies employed approximately 77,300 people. Of this total, only 2,968 Indians were employed in these companies.

A large proportion of the Indian labor force working in private industry is employed in blue-collar occupations. For example, of the 2,968 Indian employees surveyed, 1,523 were employed as operatives; 246 were employed as unskilled laborers, and 222 were employed in various service occupations.

In a special study of employment patterns in Albuquerque, conducted by Commission staff, 27 companies employing a total of 14,540 persons were surveyed. Of this number, only 471 Indians were employed by these companies. Overall, Indians constituted about 3.2 percent of the surveyed labor force. More significantly, the majority of these Indians were employed in low-skill occupations.

Two basic conclusions can be derived from these employment statistics: First, American Indians constitute a very small part of the labor force employed in private industry in New Mexico. Second, those Indians that are employed in private industry tend to be concentrated in low-skill and low-paying occupations.

Regarding Federal employment, the situation is somewhat better. In 1971 Indians comprised 13.8 percent of all the Federal employment in New Mexico. However, a rather large percentage of these Indian employees were concentrated in the lower grade and wage board levels. For example, Indians hold about 36 percent of all the GS-1 through 4 jobs, but only

5.6 percent of the classified jobs in grades GS-9 through 11, and only 3.7 percent of all the GS positions in grades 12 through 18. This relates to the total Federal employment in the State, not to any particular agency. Overall, American Indians constituted 14.5 percent of all the employees in the GS pay system, yet almost 50 percent were located in grades GS-1 through 8.

In the wage board pay system, Indians in 1971 constituted 17.5 percent of all the wage board employees. However, almost 36 percent of all the Indian employees in the nonsupervisory category, 25.6 percent of the Indian regular wage employees, and 4.5 percent of the regular supervisors were in grades 1 through 3.

The largest Federal employer of Indians in New Mexico is the Bureau of Indian Affairs. In 1971 the BIA employed 2,854 GS employees and 699 wage board workers. Overall, Indians comprised about 56 percent of all the GS employees and approximately 87 percent of all the wage board workers.

Although Indians constituted the majority of all GS and wage board employees in the BIA, most of these Indian employees were in lower grade and wage board categories. For example, Indians comprised 89.5 percent of all the classified employees in grades GS-1 through 5. On the other hand, Indians made up only 17.2 percent of all classified GS employees in grades GS-11 through 15.

In the wage board category, American Indians made up 85.5 percent of all the wage board workers employed in the BIA in New Mexico. However, over 70 percent of these Indian wage board employees earned less than \$9,000 annually. At the same time, about 85 percent of the white Anglo wage board workers employed by the BIA earned more than \$9,000 a year.

In 1972 the Albuquerque area office of the BIA employed 931 GS employees and 189 wage board workers. Indians made up 57.5 percent of all the GS employment in this area office. About 69 percent of these Indian GS employees were located at or below grade level 5, whereas only 9.6 percent of all the non-Indian GS employees were in these low grades. On the other hand, slightly over 50 percent of all non-Indian GS employees were located in grades GS-11 through 15, while only 8 percent of the Indian GS personnel were in these grades.

The same employment pattern also exists in the wage board category. As of this year, 170 Indians and only 19 non-Indians were employed as wage board workers. Over 70 percent of the Indian wage board employees made less than \$9,000 a year,

while only 37 percent of the non-Indian wage board employees earned less than this wage.

In conclusion, Indians living on reservations in New Mexico are often isolated from the economic growth of the larger society. In many cases the social and economic isolation experienced by other minority groups is compounded for Indians by the geographical isolation of the reservations. As a result, Indians on reservations usually have little interaction with the majority population, especially in the area of employment. This limitation plus the lower educational attainment levels, the lack of proficiency in the English language, and cultural differences preclude many Indians from private employment. This situation is further aggravated by the apparent lack of interest on the part of private industry to seek out Indians and train them for responsible and meaningful employment.

In terms of governmental employment, the overall picture is less than encouraging. Very few Indians are employed in State government. Again there appears to be little or no effort on the part of the State government to employ more Indians in responsible positions, especially in those areas where Indians are directly affected by decisions on the part of the State.

In the area of Federal employment, a relatively large number of Indians are employed. But this employment is mainly concentrated in two agencies, the Bureau of Indian Affairs and the Indian Health Service. Most of the other Federal agencies having staff in New Mexico employ very few Indians. Although the BIA and the Indian Health Service have a significant number of Indians employed, most of these Indian employees are in the lower grade and wage board levels.

What I would like to do now is to show a number of graphs that the staff has done depicting employment patterns in private and in State and in Federal employment.

COMMISSIONER MITCHELL. I think the stenographer is going to have to just take the text of this and we will provide illustrative material for a report later.

MR. GERLACH. I want to apologize for the small size of the graphs. I tried to make them as large as I could. But we will see what we can do.

These graphs over here depict employment in State agencies. The top part indicates the name of the agency—in this particular case, health and social services. They had a total employment as of December 1971 of 1,544.

Down the side we have the various ethnic and racial groups, white Anglo, Mexican American, American Indian, black American, Asian American. Each bar represents the total

amount in that particular racial group.

As of December 1971 the health and social services department employed 837 white Anglos. They employed also 627 Mexican Americans, only 46 American Indians, 29 blacks, and 5 Asian Americans.

COMMISSIONER MITCHELL. Will you just put that in front of here someplace where people out front can see it?

MR. GERLACH. The employment security commission employed a total of 765. Of this number, 296 were classified as white Anglo; 400 were classified as Mexican Americans. Only 51 were identified as American Indian; 10 were black, and 8 were Asian American.

The highway department, which is considered one of the largest State employers, had a total employment of 2,742. Of this number, 1,131 were white Anglo; 1,539 were Mexican American; only 58 were American Indians; 8, blacks, and 6, Asian Americans.

The department of hospitals and institutions in 1971 employed 1,532. Of this number, 400 were Anglo; 1,119 were Mexican American; 6 were American Indian; 5 were blacks; 2, Asian Americans.

The department of education in 1971 employed 502 people. Of this total, 293 were white Anglo; 194 were Mexican American; only 2 were American Indian; 13, blacks; no Asian Americans.

The department of corrections employed 532 employees in 1971: 170 were Anglo; 352 were Mexican American; 4 were American Indian; 4, blacks; 2, Asian Americans.

The game and fish department employed 192 people in 1971. Of this total, 134 were classified as Anglo; 45 were classified as Mexican American; only 2 were Indian. There were no blacks, and 1 Asian American.

Here we have the motor transportation department. They employed 197. Of this total, 68 were Anglo; 126 were Mexican Americans. They only employed 3 American Indians, no blacks, and no Asian Americans.

Another major State agency was the motor vehicle department. This department employed 293 people in 1971. Of this total, 55 were identified as Anglo; 229 were identified as Mexican American; 3 were American Indian; 6 were black, and there was 1 Asian American.

The bureau of revenue employed 309. Of this total, 124 were identified as Anglo; 179 were identified as Mexican American. There were 2 American Indians, 3 blacks, 1 Asian American.

We also did a study on private employment here in Albuquerque. We selected a number of companies that had a fairly

large employment, with one exception, and we tried to find out what their breakdown was in terms of ethnic groups.

The Albuquerque National Bank, for instance, employed 596 people here in Albuquerque. Of this total, 420 were identified as Anglo; 163 were identified as Mexican American. They had 4 Indian employees, 9 blacks, and no Asian Americans.

This data that is up here is of 1972.

Another major company in Albuquerque, General Electric Company. They employed 1,075 people in 1972. Of this total, there were 670 whites; there were 364 Mexican Americans, 11 American Indians, 30 blacks. They employ no Asian Americans.

Springer Corporation. They employed 502 people here in Albuquerque. Of this total, 349 were identified as white Anglo. There were 153 Mexican Americans. They employed 2 American Indians, 13 blacks, no Asian Americans.

Bell Telephone Company employed 1,943 people. Of this total, 1,390 were identified as white; 449 were identified as Mexican American. There were 17 American Indians employed by the company. There were 84 blacks and 3 Asian Americans.

One of the major employers in Albuquerque is Sandia Labs. They employed a total of 6,237. Of this total, 5,163 were Anglo. There were 954 Mexican Americans. There were 44 American Indians employed by this company. There were 57 blacks and 19 Asian Americans.

Los Alamos, again another major employer. They employed a total of 4,413 overall. White Anglos constituted 3,529 employees. There were 811 Mexican Americans, only 52 American Indians, 10 blacks, 11 Asian Americans.

The one exception that I mentioned before is RCK Corporation which is an Indian-owned organization. You can see quite a difference. They employed 50 people, and they only employ 3 Anglos, 9 Mexican Americans. There were 38 American Indians. It's quite the exception.

We also did a study on Federal employment in the State.

Now, these diagrams will be a little difficult to interpret because they are so small and they are pretty complex. Perhaps what I should do first is try to explain what each of these boxes are.

Basically, each Federal agency that we surveyed and the information that was used was derived from the Civil Service Commission. Each of the agencies, the Federal agencies, that we surveyed was put into a box type diagram. The box is broken down into GS levels. The height of each segment indicates the overall proportion of the total employment in

that particular GS level. The shaded area indicates the amount of Indians employed in that particular grade level or, as the case may be, in the wage level. I should also mention that the dotted line down here indicates the percentage of the minority population—in this case the American Indian, which constitutes about 7.2 percent of the State's population.

COMMISSIONER MITCHELL. Mr. Gerlach, what is a GS level?

MR. GERLACH. General Schedule.

COMMISSIONER MITCHELL. What is the difference between a 1 and a 9, for example?

MR. GERLACH. Well, the GS-1 is an extremely low level.

COMMISSIONER MITCHELL. If I were a 9, how much would I be making?

MR. GERLACH. I would say approximately about \$11,000.

MR. BUGGS. GS-1 is \$4,564 to begin.

COMMISSIONER MITCHELL. GS-1 is \$4,500? GS-9 would be twice that?

MR. GERLACH. Right, and GS-15 or 14 would be about \$15,000 or \$16,000 I believe.

MR. POWELL. \$26,000.

MR. GERLACH. That high? Okay.

On the wage board level these are predominantly blue-collar jobs. Some will have this classification. Some will not.

Now, the criteria for picking these particular agencies were based really on one factor—really the total employment. The company that did this for us, Pfizer Cybernetics, decided on 100. Each agency had to have at least 100 employees in the State. There will be one exception to this because it was a major employer.

The Treasury Department employed in New Mexico a total of 208 people in the State. Of this total there were only 2 American Indians, and these were concentrated in the GS-1 through 4 grade level. As we noted a few minutes ago, these are extremely low grade levels.

The Justice Department employed 174 people here in the State. They employ no Indians at all.

The Post Office Department. They employed a total of 2,578 Indians. Pardon me. Total employment, 2,578. The overall Indian employment in this particular agency was only 34, which is about 1.3 percent of the total employment.

The Department of the Air Force—and I'm speaking here now of civilian employment—the Air Force in the GS grade system or pay system employed a total of 2,613 people in 1971. Of this total, only 8 were American Indians. Proportionwise it is so small that you can't even see the number of Indians

employed on the graph. In terms of the wage grade or wage board system, the Air Force employed 1,209. Of this total, only 7 were American Indian.

Department of the Army. They employed 3,670 civilian employees in 1971. Of this total, only 10 were American Indian, and again these Indians were concentrated in grades 1 through 4, very low grade levels. In terms of wage board employment, the Army employed 1,284 civilian personnel. Only 17 were Indian.

COMMISSIONER MITCHELL. Did you ever find out how many Indians were employed as soldiers?

MR. GERLACH. Pardon me?

COMMISSIONER MITCHELL. How many Indians from this area are in the armed forces?

MR. GERLACH. I have no idea.

The next series of Federal agencies that we looked into was Defense Supply. Now, in New Mexico, this particular agency employed 314, total employment of 314. There were only 5 American Indians employed by this agency. Now, if you can see the graph, you would note the shading up here which would seem to indicate there a large number of Indians in this particular grade level. However, it should be pointed out that overall there were only 7 employees in this grade level. One was Indian. This would account for it.

The Navy Department employed 122 civilian personnel in New Mexico. There was only 1 Indian employed here.

Veterans Administration. In 1971 Veterans Administration employed 811 GS personnel in the State. Of this total, only 21 were Indian. There was 1 Indian in a GS-9 to 11 grade. There were 9 Indians located in the GS-5 to 8 grade, and 11 Indians in the GS-1 through 4. In the wage grade situation we have 141 total employees in the State [indicating Veterans Administration]. Only 2 were American Indian.

The Department of Transportation employed 969 people in 1971. Of this total, only 7, or less than 1 percent of the total, were Indian.

The Department of Agriculture had a total GS employment of 1,317. Only 26 were American Indian. Approximately 2 percent of the total employment was Indian.

HUD—Department of Housing and Urban Development—total employment was 77. Only 4 were American Indian.

Atomic Energy Commission, total employment of 913. Only 7 were American Indian. In this agency Indians constituted less than 1 percent of the total employment.

This graph depicts the employment in two of the major

Federal agencies or major employers in the State, Department of Health, Education, and Welfare and Department of the Interior. I should also note that the Public Health Service Indian Health Service comes under the HEW, and this will account for some of the figures that we are about to bring out. Overall, HEW employed 994 GS personnel in the State in 1972; 532 were Indian. Now, although I have no adequate statistics on the number of Indians employed by the IHS, most of these Indians are. Overall, Indians make up about 53.5 percent of the total employment in HEW in the GS pay system.

In the wage grade system we have another situation. Of the 178 employees in HEW in the wage grade, 158 were Indian. You will note that 98.57 percent of all the employment was in grades 1 through 3. This is, 98.57 percent of all the persons in wage grades 1 through 3 were Indian. Ninety-one percent in wage grades 4 to 6 were Indian. In the wage grades 7 through 9, 90.3 percent were Indian. And in the higher grades, wage grade levels, 10 through 12, only 22 percent were Indian. You will note there were 88 percent total employment in that particular agency.

Department of the Interior, which includes the Bureau of Indian Affairs. Overall, Interior employed 4,066 people in 1972. Of this total the BIA employed approximately 2,854, so that is approximately 70 percent of all the Department of the Interior personnel are employed by the Bureau of Indian Affairs.

Now, of this 4,066 total employment, 1,633 or 43.8 percent were classified as Indian, and 79.6 percent were located in grades 1 through 4. That is, 79.6 percent of all Indian employment was located in this grade level, or, in other words, 1,092 out of 1,781 were employed at this low level. Forty-six percent were employed in grades 5 to 8—46 percent of the Indians. Sixteen percent of all employment in grades 9 through 11 were Indian. And only 9.3 percent in grades 14 through 15 were Indian. In other words, out of a total employment in those grades of 107, only 10 were American Indian.

This graph depicts the distribution of American Indian employees in the Bureau of Indian Affairs, both for New Mexico and for Arizona. In New Mexico there is a total Bureau of Indian Affairs or BIA employment of 2,854 in the general schedule or GS pay system. Of this total, 1,653 were Indian; 1,221 were considered to be non-Indian. In this case Indians constituted 57 percent of the total GS employment in the State.

Broken down by wage level we get the following figures: GS-1 through 4, there was a total of 1,035 people employed in this grade; 974 of these people were Indian, or about 94 percent of

all the employment in grades 1 through 4 were Indian in the BIA. In grades 5 to 8, out of a total of 610, there were 420 Indians; 69 percent, in other words, were employed in this grade—69 percent of all those employed in this grade were Indian.

In grades 9 to 11 there was a total employment of 857. Of this 857, 191 were Indian. In other words, 22 percent of all those employed in that grade level were Indian. In grades 12 to 13 there was 295 people employed in those grades; 38 were Indian—in other words, 13 percent. In the highest grade levels, GS-14 through 15, there were 57 people employed; 10 were Indian.

The same pattern also shows up in the wage grade system. There was a total employment of 699. Indians constituted 608 out of that total employment, or 86 percent of the total employment in the wage grade situation. Most of these Indians as you will note are located in the very low wage grade levels. Over 98 percent of all those employed in the zero to \$5,499 wage grade—that is, in dollars—were Indian. In the next grade, 99 percent were Indian. And on up. You have most of the employees were Indians until you get to the very high grade levels where in the \$14,000 to \$17,999 level only 37 percent were Indian. Of course, you have a difference up here in the higher level where 50 percent were Indian. However, there were only 2 employees at that wage level. One was Indian.

This graph depicts the overall employment by the area office. We have three area offices up here, the Albuquerque area office, Navajo, and the Phoenix office.

The Albuquerque office of the BIA employed in the GS level 931, total employment of 931. Of this total, 536 were identified as American Indian; 395 were considered to be non-Indian. Almost 94.7 percent of all Indian employees in this area office were in grades GS-1 through 4; 73 percent were in grades 5 to 8. Only 14 percent were in grades 12 to 13. And only 12 percent were in grades 14 to 15.

One important thing to note here is that, while Indians made up approximately 58 percent of the total employment in this office, 94 percent of all those Indians employed were concentrated in grades GS-1 through 4. The same pattern also appears to be true for the Navajo area office and for the Phoenix office.

The last diagram is similar to the one preceding it, only it depicts the wage grade employment by area office.

In the Albuquerque area office there was a total of 189 wage

grade employees; 170 were identified as American Indian. As you can see, they take up most of the segments on the graph. But over 100 percent of all those employed in the very low wage grade levels were Indian. When you get up to the very high wage levels there were 18 persons employed; 72 percent were Indian. In the very high level—that is, approaching \$18,000 in terms of wages—100 percent were Indian. Again, the pattern appears to be similar for the other area offices.

I think what these statistics indicate is that very few Federal agencies employ Indians in any substantial number. Where Indians are employed, they are generally concentrated in lower grade GS levels or wage board levels.

That's about all I have to say. Are there any questions?

COMMISSIONER MITCHELL. Thank you, Mr. Gerlach. Do my colleagues have any questions up here?

[No response.]

Just one quick question that comes to mind is you talk about private employers. The Bell Laboratories or the Bell system, the Sandia Laboratories, the Los Alamos Laboratory setup, and the Albuquerque Bank are all in one way or another involved in the receipt of or operation under Federal relationships? Right?

MR. GERLACH. That is correct.

COMMISSIONER MITCHELL. Which means they are all required to have affirmative action programs, required to hire minorities, and can be dealt with severely if those obligations aren't met? Is that correct?

MR. GERLACH. That's correct. Yes.

COMMISSIONER MITCHELL. Did you do any investigating to see whether such affirmative action programs were indeed in existence?

MR. GERLACH. No, not myself.

COMMISSIONER MITCHELL. I'm sure this will come up in later testimony.

COMMISSIONER RANKIN. Mr. Gerlach, what percent of the people employed in New Mexico are employed by the Federal Government?

MR. GERLACH. You mean American Indians?

COMMISSIONER RANKIN. No, everybody in the State.

MR. GERLACH. I couldn't answer that.

COMMISSIONER RANKIN. Could you make a guess on it? I mean this startles me as to the number—

MR. GERLACH. No, I couldn't. I wouldn't want to make a guess. It's in the report, and I just don't remember it.

COMMISSIONER MITCHELL. Thank you, Mr. Gerlach.

MR. POWELL. Mr. Chairman, at this point I'd like that summary and the report upon which the summary is based entered in the record.

COMMISSIONER MITCHELL. So ordered.

[Whereupon, the document referred to was marked as Exhibit No. 8 and received in evidence.]

COMMISSIONER MITCHELL. And perhaps, Mr. Gerlach, if you can answer Commissioner Rankin's question about the percentage of people in the State of New Mexico who are employed by the Federal Government and by the State government separately and as a combined total, it would be helpful to have that in the record too.

MR. GERLACH. All right.

[See Exhibit No. 8 for this information.]

COMMISSIONER MITCHELL. Now we will have some conversation from witnesses on private employment, and I would like to have come to the witness stand Clyde Leon and Bernice Kirk.

I met Mr. Leon earlier in the day and see him coming forward.

Is Ms. Kirk present?

You are Clyde Leon and Ms. Bernice Kirk?

[Whereupon, Mr. Clyde Leon and Ms. Bernice Kirk were sworn by Commissioner Mitchell and testified as follows:]

TESTIMONY OF MR. CLYDE LEON, TRIBAL COUNSELOR, SANTA ANA PUEBLO, AND MS. BERNICE KIRK, PSYCHOLOGY STUDENT, UNIVERSITY OF NEW MEXICO

COMMISSIONER MITCHELL. Thank you. Would you please be seated?

MR. POWELL. Beginning with Ms. Kirk, would you each please state your name, tribal affiliation, address, and occupation for the record?

MS. KIRK. I am Bernice Kirk. I am Jicarilla Apache. I'm a psychology student at the University of New Mexico.

COMMISSIONER MITCHELL. Would you please speak a little louder, please? Bring the microphone closer to you.

MS. KIRK. I was employed as a research assistant by the Southwestern Cooperative Educational Laboratory.

MR. POWELL. Mr. Leon?

MR. LEON. My name is Clyde Leon, and I'm from Santa Ana Pueblo, and I'm the tribal counselor of the Santa Ana Pueblo and presently employed by the OEO [Office of Economic Opportunity] program.

COMMISSIONER MITCHELL. Mr. Leon, would you, too, please speak up? We want the recorder to hear you, but the people

here also will not be able to hear you unless you talk a little louder.

MR. LEON. Okay. Thank you.

MR. POWELL. Ms. Kirk, in connection with your job with the Southwestern Cooperative Educational Laboratories, were you involved in a study on the private employment in the Albuquerque area?

MS. KIRK. Yes, I was.

MR. POWELL. Would you tell us about that study? Was it under contract with the Equal Employment Opportunity Commission?

MS. KIRK. Yes, it was.

MR. POWELL. Would you tell us about it? What was the purpose of the study?

MS. KIRK. The purpose of the study is to develop affirmative action techniques to increase access and interest of urban Indians to private employment.

MR. POWELL. Did it have a title? What was the title of the study?

MS. KIRK. That was the title.

COMMISSIONER MITCHELL. Was it limited to New Mexico?

MR. POWELL. This study was limited to the Albuquerque area, was it?

MS. KIRK. Yes, it was limited to the Albuquerque metropolitan statistical area.

MR. POWELL. Would you please explain the methods you used in collecting the information? Did you have a research tool? And how large a sample did you see?

MS. KIRK. The method of collecting data was through random sampling, structured and unstructured interviews, and tabulating the percentages on the basis of the data acquired. The target groups were employers, unions, and the Indian community. Twenty-two of the largest companies were randomly selected from the Albuquerque industrial directory and interviewed. Personnel directors and assigned representatives of these companies were interviewed. Sixteen unions were randomly selected, and assigned representatives were interviewed.

The Indian community—five of the surrounding pueblos—were interviewed. These people were interviewed by interviewers trained by the laboratory. There is a total labor pool of 4,000 in these surrounding pueblos. Approximately 5 percent of the total labor pool is being interviewed. To date 112 responses have been acquired.

MR. POWELL. What are some of the tentative findings of this project, Ms. Kirk?

MS. KIRK. The original purpose of the project was to obtain a breakdown of the social characteristics of the American Indian labor force in the Albuquerque area. Some of the findings are as follows:

On employers, attitude profiles that were developed demonstrated that the most common problems identified by employers were excessive absenteeism, language barriers, educational barriers, and the nonstability of the Indian employee, probable causes identified with alcoholism, religious activities, and transportation.

Stereotype concepts of the Indian labor force identified—that is, we interviewed these personnel directors and asked them what was their concept of Indian culture and particularly as related to the labor force. Some of these concepts, the most—these are based on the most common responses, and these are:

The Indian is not stable.

The Indian is an introvert. Therefore, he does not meet the criterion for managerial, supervisory, and sales positions.

The Indian has a language barrier. Therefore, it is highly probable that he is incapable of demonstrating skills effectively on the job for higher than entry level jobs.

These concepts were identified through the question posed: "Why do Indians not get promoted? Why would you think that you would not promote an Indian? Why is it that they aren't being promoted?"

And we made the assumption that they weren't being promoted.

Other findings were that the Indian is a hard worker. And these companies that said that the Indian was a hard worker were asked: "What type of wages do you pay for this hard work?" And most of them had to say that it was minimum wages.

Other findings were that Indians were predominantly found in the nonskilled areas. I would like to point out that it is general labor knowledge that these nonskilled areas do not appear to offer any upward mobility. That is, how would it be possible for an assembler to suddenly make a transition to probably sales department or to the administrative department?

Two of the companies identified the fact that they had an affirmative action program.

The assembly type industries had as high as 40 percent of

the labor force as Indians. We could not get the work force distribution breakdowns from these employers, but upon visual observation we could see that these Indians were in the production areas and the manual labor areas.

MR. POWELL. Did your study indicate whether or not Indians were aware of their rights under Title VII? And did they file complaints under Title VII of the Civil Rights Act?

MS. KIRK. They aren't informed about Title VII, according to a testimonial source from an Indian labor relations center.

MR. POWELL. You indicated that Indians often don't show up in examinations on the basis of skills because of language barriers, so is it your view that even though they have the requisite skills they don't get the jobs because of the language barrier? Is that what you would say?

MS. KIRK. I think—

MR. POWELL. That the tests often don't accurately measure the skills of Indians because of the language barrier?

MS. KIRK. Yes, I think that the language barrier is mainly concentrated in the verbal skills area rather than other areas—

MR. POWELL. I see.

MS. KIRK.—of communication.

MR. POWELL. Thank you.

Mr. Leon, what are your duties as community action program director?

MR. LEON. Well, first of all, I'd like to make a statement and also thank the Commission for giving me this opportunity to say some of the things that I need to say to the Commission. Also it's bad that the civil rights law has to be made into law. And with my knowledge I always thought that we are all the time created equal. And these are things that I wanted to say right now.

The question you asked me is—would you repeat again, please?

MR. POWELL. What are your duties as director of the community action program?

MR. LEON. Well, I am the coordinator for Santa Ana Pueblo for the OEO programs, and I administer the Head Start, the home enrichment, and the alcoholism program and CHR program.

MR. POWELL. In the course of your duties, are you familiar with some of the employment problems of Indians?

MR. LEON. Yes.

MR. POWELL. Would you care to tell us about some of them?

MR. LEON. Yes, sir. Well, first of all, I want to start with my

own personal problem with the employment. In the year of 1956 when I got out of the service I went to school in Lawrence, Kansas, as an electrician, and I was under the Veterans Administration program. And at that time my tuition was paid; my room and board was paid, and after that I only had about \$1.35 to last me for the whole month, and this is where my employment began. I looked for other employment.

I went down to the Western Union at Lawrence, Kansas, applied for the employment. First thing they asked me was, am I registered? And I didn't quite understand what they were talking about at that time.

About three or four times I have gone to places—

MR. POWELL. What did they mean? Registered to vote?

MR. LEON. I never could find out. Nobody seems to want to tell me about it, until later on I run into a man on the street. Some old man, I talked to him. Oh, he talked to me real nice, so I talked to him. I asked him, "What do they mean by registered?" And he says, "Well, the party you're supposed to be registered in, either in Republican or Democrat."

[Laughter.]

And there I found the answer. So I said, "I'm going to try this one again." I went back to the Western Union and put my application in, and right there where it said, you know, the party you belong— And I put down Republican because he told me that State was a Republican State.

[Laughter.]

And 5 minutes later I was employed.

[Laughter.]

MR. POWELL. Wonderful.

MR. LEON. And these are the things, you know, that the Indians face throughout the Nation. And if I'm facing it, I'm sure a lot of our Indian people are facing it.

MR. POWELL. But, Mr. Leon, in the course of your work do you get complaints or hear of complaints that Indians have regarding employment problems? And if you do, would you care to tell us about some of them?

MR. LEON. Yes. It's the same situation, especially at the public schools. I have complaints similar to the same thing—that, "Is this person registered?"

MR. POWELL. Some of their employment problems are related to educational deficiencies? Is that it?

MR. LEON. Yes. And also in the registration in, what party do you belong to? This question always comes up in that area.

COMMISSIONER MITCHELL. Here in New Mexico?

MR. LEON. Yes, sir.

MR. POWELL. Either Ms. Kirk or Mr. Leon, could you suggest remedies to the situations that you have been describing? Do you have any suggestions for remedies?

MS. KIRK. Yes, I could.

MR. POWELL. Yes, Ms. Kirk?

MS. KIRK. Well, first of all, social problems evolve through several stages—awareness, policy determination, and reform. I would recommend that awareness be brought about by the dissemination of information—brought about by this act of dissemination of information, not stop at the awareness level. Also in advising the Indian community about such titles as Title VII, that information not be given as to only the benefits. I believe that it ought to be given as to the detriments.

For example, a person who files a discrimination suit under Title VII is subject to sanctions, like, for example, his personal employment record, you know, is up for examination by future employers. Also there is no guarantee that the provisions like, for example, reinstatement and the retaliation clause is effective on the job.

And also I'd like to recommend research and behavioral studies on the subject of interracial relations. For example, I think there should be some type of effective measures for identifying discrimination. Because, take the person that files a discrimination suit or complaints: He's up against the institution of a private corporation, the Federal agents, and the courts of law, and he has to prove that a certain act of behavior constitutes discrimination.

And I would say from my experience in research that it would take 10 years for a linguist to define discrimination and 20 years for a behavioral psychologist to define what acts of behavior constitute discrimination. And also it's very hard to define discrimination. It's very difficult. The person is given the burden of proof. And in view of the fact that he does have a language barrier, I can see why people don't use Title VII.

The results and findings of these behavioral studies and effective measures for identifying discrimination should then be used by the labor relations centers, private employment, to combat discrimination if they are in fact interested in combating discrimination.

Also I'd like to recommend that unions and employers and Indian agencies coordinate their efforts to solve problems like, for example, transportation, training, and educating the work forces.

MR. POWELL. Thank you.

Mr. Leon, do the people on your pueblo have problems

getting employment in State government? And what is their attitude about State and Federal employment?

MR. LEON. Yes. Well, I think I have clarified most of it from what I said a while ago. Like some of the discrimination, like in my part especially—there's another one I want to explain too before I go into that—is that in the year of 1969 and 1970 I volunteered to go into the election part of it in the Soil and Water Conservation, and the Council of the Seven Governors supported me to get into this election position, which I did. I won by 900 votes.

And then, in turn, the non-Indians there in Bernalillo filed suit against me saying that an Indian has no right to serve in elected position. They took me to court, which I didn't attend because at that time I was sick. But my fellow members, the governors, went down to the court and listened to the judge that ruled in our favor that we, any indigene, can serve in the election position.

And, I'm sure— Or I have seen in a lot of cases in the public school, the BIA, the PHS [Public Health Service], and the State that has denied a lot of our Indian people employment because of lack of education, and they tell us Indians that we're afraid of responsibility, and a lot of—we're not dependable, and most of all the educational part of it.

MR. POWELL. I see. Thank you.

MR. LEON. And if they are employed in that position, they do have training like advanced training, and none of our Indian people get that advanced training. So, therefore, there is no promotion for our Indian people; no advanced training for our Indian people, and this is the reason why I'm concerned.

MR. POWELL. Thank you very much.

I have no further questions, Mr. Chairman.

COMMISSIONER MITCHELL. Commissioner Rankin?

COMMISSIONER RANKIN. I have no questions.

COMMISSIONER MITCHELL. Mr. Buggs?

MR. BUGGS. No questions.

COMMISSIONER MITCHELL. Just one quick question about the unions because we haven't mentioned them, and they are very influential in whether or not you're employed.

Perhaps one of you can talk about—maybe Ms. Kirk came across this in the course of her research: What's the union opportunity for an Indian in New Mexico?

MS. KIRK. Most of the unions interviewed did not want to grant requests for information, but we do have information of a testimonial sort from an Indian labor relations center, which pointed out that the costs and qualifications appear to be an

effective eliminating device for Indian membership. And also in the course of interviewing these unions, minimum recruitment efforts were made, and in a sample, community sample, the Indians had no knowledge or minimal knowledge of unions.

COMMISSIONER MITCHELL. What would you say is the union membership in this State? High? Very low? Almost nonexistent?

MS. KIRK. According to statistics received from a labor relations center, there are 79 participants in statewide apprenticeship programs.

COMMISSIONER MITCHELL. So there are 79 Indians at this moment involved in apprenticeship union programs?

MS. KIRK. I can't, you know—

COMMISSIONER MITCHELL. Well, at the time you did the study.

MS. KIRK. Right—the validity of the statistics.

COMMISSIONER MITCHELL. How many members were there all together? Would you know? Of all unions? Did you have a chance to get any kind of estimate of that?

MS. KIRK. No, we didn't.

COMMISSIONER MITCHELL. Thank you both very much. I think the Commission is at the threshold of a major examination of the employment problems for Indians here, and you have both indicated two very, very significant aspects of that.

Our next panel will be a panel of private employers, and I would like to call now Mr. George Jenks of the Albuquerque National Bank, Mr. J. Lynn Hendren of the Springer Corporation, Mr. David Tarbox of Sandia Labs, Inc., Mr. Winston Hunt of the Public Service Company of New Mexico. I have a note here that Mr. Marshone of the New Mexico Public Service Company will testify with Mr. Hunt, and the same questions apply to both of them so I guess that's quite satisfactory. And Conrad Gutierrez, Equal Employment Opportunity Officer, and Charles Canfield, the Personnel Director of Los Alamos Laboratories.

We're going to have to have a lot of chairs and a few more microphones to handle all of those. But if they will all gather around—gentlemen, perhaps we can unscrew those microphones from the stands and just hand them around as Mr. Gerlach used them before.

Gentlemen, are you all there? Seven people? I see five. Who is missing? We'll find out when we call the roll. Would you identify yourself, please?

MR. JENKS. George Jenks.

COMMISSIONER MITCHELL. Mr. Jenks is with the Alberquerque

que National Bank.

MR. HENDREN. I'm Mr. Lynn Hendren, Springer Corporation.

MR. TARBOX. Dave Tarbox, Sandia Corporation.

MR. CANFIELD. Charles Canfield, Los Alamos Scientific Laboratory.

COMMISSIONER MITCHELL. You're personnel director, are you, of Los Alamos?

MR. CANFIELD. Yes.

MR. GUTIERREZ. Conrad Gutierrez, Los Alamos Scientific Laboratory.

COMMISSIONER MITCHELL. We're missing Mr. Hunt and Mr. Marshone of the Public Service Company of New Mexico. Correct? They're not here. They must have blown a fuse.

[Laughter.]

Well, gentlemen, you have all identified yourselves, and I would like to swear you in.

[Whereupon, Messrs. George Jenks, J. Lynn Hendren, David Tarbox, Conrad Gutierrez, and Charles Canfield were sworn by Commissioner Mitchell and testified as follows:]

TESTIMONY OF MR. GEORGE S. JENKS, SENIOR VICE PRESIDENT, ALBUQUERQUE NATIONAL BANK; MR. J. LYNN HENDREN, VICE PRESIDENT, SPRINGER CORPORATION; MR. DAVID TARBOX, DIRECTOR OF PERSONNEL RELATIONS, SANDIA LABORATORY; AND MR. CHARLES CANFIELD, PERSONNEL DIRECTOR, AND MR. CONRAD GUTIERREZ, EQUAL EMPLOYMENT OPPORTUNITY OFFICER, LOS ALAMOS SCIENTIFIC LABORATORY

COMMISSIONER MITCHELL. Let the record show everyone has said they do.

And we also would like the record to show that Mr. Winston Hunt of the Public Service Company of New Mexico was subpoenaed, that he has not appeared.

MR. POWELL. And the same is true of Mr. Marshone.

COMMISSIONER MITCHELL. And Mr. Marshone of the Public Service Company of New Mexico. They both were subpoenaed. They are both required to be present. The Commission expects an acceptable explanation of their absence, and we will therefore proceed without them at this time.

Mr. Counsel, you may proceed.

MR. POWELL. I think you have each stated your name. Would you review again with me though your name, address, and occupation for the record so I will have some idea to whom I am talking?

MR. JENKS. George Jenks, 1941 Indian School Road, Albuquerque, Senior Vice President, Albuquerque National Bank.

MR. HENDREN. I'm Lynn Hendren, 8606 La Sala del Centro,

Vice President, Corporate Secretary of Springer Corporation.

MR. TARBOX. David Tarbox, 1305 Florida, N.E., Albuquerque. I'm Director of Personnel Relations at Sandia Laboratories.

MR. CANFIELD. Charles R. Canfield, Personnel Director for Los Alamos Scientific Laboratory. I live at 392 Navajo, Los Alamos.

MR. GUTIERREZ. Conrad Gutierrez, Equal Employment Opportunity Officer for the Los Alamos Scientific Laboratory, and I reside at 2443—35th Street, Los Alamos.

COMMISSIONER MITCHELL. Mr. Powell, before you proceed, may I for the record advise you that General Counsel's office of the Commission should be in touch with the Public Service Commission as quickly as possible to ascertain—

MR. POWELL. Yes, Mr. Chairman. We will.

COMMISSIONER MITCHELL. —the reasons for Mr. Hunt's and Mr. Marshone's absence.

MR. POWELL. We will.

Mr. Canfield and Mr. Gutierrez, what percentage of Los Alamos Laboratory work is done pursuant to contract with the Federal Government? I take it you do have Federal contracts?

MR. GUTIERREZ. Yes.

MR. POWELL. What percentage of your work is done pursuant to Federal contract? Mr. Canfield?

MR. CANFIELD. A hundred percent.

MR. POWELL. One hundred percent? What is the total number of persons employed within your work force, Mr. Canfield?

MR. CANFIELD. Approximately 4,400 people. It depends on how you count them.

MR. POWELL. It depends on how you count them?

COMMISSIONER MITCHELL. Well, that can be full or part time.

MR. CANFIELD. Like you have casual employees. That's a census figure.

MR. POWELL. Fine. Fine. Of this number, how many are Indians?

MR. CANFIELD. At the present time we have 53 Indians.

MR. POWELL. Fifty-three of 4,400 employees?

MR. CANFIELD. That's correct.

MR. POWELL. To what do you attribute such a low number of Indians employed at your facility in a State, particularly in an area, where there is such a high concentration of Indians?

MR. CANFIELD. Well, one of the problems, as I see, it is 40 percent of our staff are scientists and engineers. We have a very difficult time finding degreed Indians in the fields that we are interested in. That is part of the problem.

MR. POWELL. That would account for about 1,900 or 2,000 of your 4,400?

MR. CANFIELD. Approximately 1,800 of our people are—

MR. POWELL. Then you have about 2,600 people about whom it cannot be said that the fact that you require a college degree is the reason why you don't have Indian employees? Is that correct?

MR. CANFIELD. Would you run that by me again?

MR. POWELL. Well, that 2,600 people fill positions which don't require college degrees, so that wouldn't exclude Indians?

MR. CANFIELD. No, that is not quite true. When I speak of scientists and engineers, we have about 1,700 of those. A number of the administrative positions and so on do require college degrees.

MR. POWELL. Well, there are a number of positions in your laboratory which do not require college degrees?

MR. CANFIELD. That is correct.

MR. POWELL. How many would you say?

MR. CANFIELD. Well, let's see. I would say there are probably like 1,200 to 1,500 that do not require college degrees.

MR. POWELL. Well, presumably there are a number of Indians in this State who could fill not only the college degree positions, because there are some, but there are a number of Indians who could fill some of those 1,500 positions which do not require college degree, wouldn't you agree?

MR. CANFIELD. Certainly.

MR. POWELL. What efforts have been made to increase the number of Indians in your company's work force?

MR. CANFIELD. Do you want to speak to that?

MR. GUTIERREZ. I think that a better answer to your question, Mr. Powell, would be couched in the following words:

It is not that the Indians perhaps are not available, the American Indians. The Los Alamos Scientific Laboratory certainly has a good rapport with the pueblos, the northern pueblos.

MR. POWELL. Why is that? Why do you have a good rapport with them?

MR. GUTIERREZ. Because, for example, Mrs. Davis who is here and myself, we belong to the Concentrated Employment Program which encompasses the eight northern pueblos.

We involve— For example, we have perhaps the only two Indians—certainly the only Navajo Indian who is a Ph.D. in physics, nuclear physics, and we have another Indian—

MR. POWELL. Are you sure he's the only Navajo Indian that has a Ph.D. in physics?

MR. GUTIERREZ. We can't find any more within the limits of our research.

MR. POWELL. You draw nationwide for your Ph.D. candidates?

MR. GUTIERREZ. Yes, and we have a list here of all the college graduates in the United States, Indian graduates, that we have been able to find, and we do not find any nuclear scientists.

MR. POWELL. I see.

MR. GUTIERREZ. We do have another one who has a master's in science, also a physicist, and we have involved, for example, these two young—I'm sorry—

MR. POWELL. May we have that list for the record later on? You don't have to give it now.

COMMISSIONER MITCHELL. Can you send us a copy of it?

MR. GUTIERREZ. Oh, yes, I think we can send a copy of it. Is it all right? Our attorney is here now.

MR. POWELL. He can come up and sit down if he wants to. You have the right to be represented by counsel.

[The document referred to is in Commission files.]

MR. GUTIERREZ. This was provided to us by the Indian people, for example.

We go and give talks at the Indian pueblos. We try to encourage young people to come to Los Alamos. And, you see, there is one of the difficulties we encounter. The number of Indian people that come and seek employment at Los Alamos are not as numerous as the other ethnic people, and that is very difficult for some people who do not understand the background.

I think that we have the image—and it is true of most of the Anglo enterprises—we have the image of being untouchable, that we are way up in the clouds, and, therefore, the minorities feel inferior and, "We don't want to go and ask a favor."

MR. POWELL. Don't you have an obligation to do something about that image?

MR. GUTIERREZ. That's what I'm getting at. And, therefore, for example, we have taken these two Indians, and we have taken them back to their pueblos as a background; and Sandia Laboratories, for example, furnished the crew, and they went down there, and we took a picture of them growing up and then placing them in the laboratory, and now we are in the process of releasing these films and showing them at the different pueblos with the idea in mind that we must if we are going to get a greater percentage of Indians in the labor market who will be competitive at the Ph. D— And not only the

Ph.D. now. Los Alamos is looking at the postdoctoral level now. That's how far advanced we are going.

And it seems a losing battle, gentlemen, that if you were to draw a graph—I was interested in those graphs there—you always find the Anglo American up here, then perhaps the black here, and then the Chicano. Maybe the Oriental is here. I'm speaking of the educational level. And where do you find the American Indian? Down here at the bottom.

By the time the American Indian graduates from high school the Spanish American has probably had 2 years of college. The black and the Oriental are probably graduating from college. And the Anglo American is already a doctorate. And so the cycle keeps going. By the time the Indians graduated from college, the Anglos and others are postdoctoral. And heaven knows when we are going to catch up.

COMMISSIONER MITCHELL. May I—

MR. GUTIERREZ. This is the sort of thing we encounter.

COMMISSIONER MITCHELL. It's an interesting cycle, and I'm familiar with it since I spend my days at a university. Now, are you the University of California?

MR. GUTIERREZ. Yes.

COMMISSIONER MITCHELL. So you're not talking about what the universities are doing off somewhere. You run a university. You have Federal funds. You could go out; you could recruit Indians; you could train them; you could produce the people you're looking for all over the country in your own shop, couldn't you?

MR. GUTIERREZ. Yes, we could. For example, last week we sent Mr. James Singer—I'm sure a lot of people here know Mr. Jim Singer from Santa Clara Pueblo—to Seattle, Washington.

COMMISSIONER MITCHELL. How many Indians are there in the University of California?

MR. GUTIERREZ. Fifty-two. I mean in Los Alamos Scientific Laboratory.

COMMISSIONER MITCHELL. No, I'm talking about enrolled in the University of California which has the contract that you're operating.

MR. GUTIERREZ. I guess Mr. Owens could give us—

MR. MARK OWENS [Counsel]. I have no idea.

MR. GUTIERREZ. He's from California. But I can tell you more or less.

COMMISSIONER MITCHELL. Well, see, the point I'm making really is that we may be coming to the point where we are going to have to deal with these kind of problems—

MR. GUTIERREZ. You're absolutely right.

COMMISSIONER MITCHELL. —more directly, and where the Government cannot give a contract to a university which then subcontracts it out of its own State, to New Mexico, and then says, "It's too bad they don't have any educated Indians down there," when you're running the very place where Indians can be educated.

MR. GUTIERREZ. See, it's very difficult, Mr. Mitchell, to measure the capacity of Indians, of an ethnic group, because in our laboratory we just don't deal with Indians. In my office I deal with Chicanos, Indians, blacks, Orientals, and now all of a sudden we have the women.

COMMISSIONER MITCHELL. But the University of California would not admit that it's very difficult to measure the capacity of Indians?

MR. GUTIERREZ. No, no. What I'm saying is, for example, we had a meeting here in Albuquerque at the University of New Mexico of about approximately 40 bona fide Chicano and Indian scientists to show you the interest of Los Alamos Scientific Laboratory in going out and promoting and recruiting wherever possible.

Mr. Jim Singer just got back from Seattle. Okay? How many did he find among 1,500 Indian students who went there? In the hard sciences. And we're speaking of chemistry, engineering, physics, computer science, mathematics, not the biological sciences. All right? The hard sciences.

Now, when those 40 scientists met here in New Mexico they formed for one purpose and sole purpose of forming what they call the Federation of Chicano and Indian Physicist Scientists—with the object and the purpose of going out to the schools, the Indian schools and the Chicano schools, and educating the people and telling them, "Look, there is a future in education."

Los Alamos, for example, has sponsored another one, what we call a consortium. Again, there was an Indian who went from Los Alamos and four more people to Washington, spent a whole week canvassing all the agencies in Washington for funds whereby the colleges in New Mexico and in the Southwest, 27 of them, could form into a consortium and thereby be eligible for funds so that more Indians and Chicanos could go into the fields of engineering and chemistry and commerce. They are tangible things, but they don't come up in numbers.

And like Mr. Canfield said, I think that the reason why we are—and we're not criticizing—it's just an observation—that the reason why we don't have more is because we just—they don't come to us in the first place. And, secondly, when they do

come, there is a lack of real advanced formal education. And it's not a criticism but rather an observation.

MR. POWELL. But you do agree that as a large Federal contractor you have an obligation to take those steps necessary to see to it that you have a higher minority employment ratio particularly with respect to Indians in a State like this, don't you?

MR. GUTIERREZ. Yes. I think that is just what I got through saying.

MR. POWELL. You mentioned some of the things that we at the Commission would classify as a long-term kind of project.

MR. GUTIERREZ. Yes.

MR. POWELL. You do agree that you ought to engage in that?

MR. GUTIERREZ. Oh, yes, we are perfectly aware of it.

MR. POWELL. Tell me, have you been reviewed by the Office of Federal Contract Compliance?

MR. GUTIERREZ. We have been reviewed. We have an affirmative action. It's a written affirmative action. It's in the hands of the AEC [Atomic Energy Commission] office here. It has been sent to Washington. It has been reviewed.

MR. POWELL. When was the last time you were reviewed?

MR. GUTIERREZ. About 2 years ago. Isn't that right, Chuck?

MR. CANFIELD. About 2 years old.

MR. GUTIERREZ. December of 1970.

MR. BUGGS. Did they approve it?

MR. POWELL. Was your affirmative action plan approved?

MR. GUTIERREZ. It was approved, yes.

MR. BUGGS. Approved or reviewed?

MR. GUTIERREZ. Reviewed and approved.

MR. BUGGS. Could you tell me, Mr. Gutierrez, when those pictures you talked about taken at the pueblo—

MR. GUTIERREZ. They're movies.

MR. BUGGS. Movies? When were they taken?

MR. GUTIERREZ. They were taken last year. Irving Jose went to Acoma and Fred Young went to Many Farms. He's a Navajo.

MR. BUGGS. And Mr. Singer went to Washington to do some recruiting, did you say?

MR. GUTIERREZ. No, Mr. Singer and I went to Washington.

MR. BUGGS. The State of Washington?

MR. GUTIERREZ. No, to Washington, D. C., to recruit for funds. I mean to look into funds. The HEW, National Institutes of Health. You name them. We spent a whole week.

MR. BUGGS. Not to find Indians though?

MR. GUTIERREZ. No, to get money for the consortium. I wish

we could find Indians over there. I mean— But the trip to Seattle, Washington, was for the meeting of an educational— 1,500 young people were going to meet there with their counselors.

MR. BUGGS. Mr. Gutierrez, in a State in which 7.6 percent of the population is American Indian and where 1,400 of the jobs do not require a college education, is it reasonable that only 44 Indians could be employed?

MR. GUTIERREZ. It is—

MR. BUGGS. Fifty-two.

MR. GUTIERREZ. Fifty-three really.

MR. BUGGS. I would even give you another 52.

MR. GUTIERREZ. Well, we would take 54 if we could find one more. I mean it is quite easy—I am not being critical—but it is quite easy not to realize the difficulties there are or the troubles that we go through in order to make sure that the person who gets there is not only qualified—because just to give him a job is not going to entitle him to all the privileges of being promoted, of being happy in his job. If he does not compete, he is going to be a very unhappy person.

And also, Mr. Buggs, there is also another thing that we must remember. We also have Chicanos. We also have Indians. We also have Orientals. We also have women. And everybody comes over and wants a piece of the pie.

MR. BUGGS. Sure.

MR. GUTIERREZ. Okay?

MR. BUGGS. Are you saying, Mr. Gutierrez, that you can't do any better than 52?

MR. GUTIERREZ. We started out with 46, and we picked up 6 in 1 year; and we think that is a tremendous thing as far as we—

MR. CANFIELD. Let me just speak to that. In the last 4 years—and during the last 4 years—we have had a layoff of 400 people in the laboratory. In 1968 we had 28 American Indians on board. Today we have 52. Percentagewise we have 1.17 percent American Indians on our payroll today—this during a period of time when we have been cutting back.

Now, we are— True, it is back up now to approximately the same level as before the layoffs. We feel this is a good faith effort to increase our Indian population in the laboratory.

COMMISSIONER MITCHELL. Are you a tax-exempt organization? When you get your contracts from the Atomic Energy Commission, do you pay taxes on the income from those contracts?

MR. CANFIELD. I'll have to refer that question to counsel.

MR. OWENS. If I may answer the question, Mr. Mitchell, there is no income from the contracts. The university operates the contracts on a cost basis.

COMMISSIONER MITCHELL. In other words, if that contract were in the hands of a private commercial organization there would be no overhead charges included?

MR. OWENS. I assume a private organization would charge overhead. The university charges a management fee of some figure which I don't know.

COMMISSIONER MITCHELL. Would it be in the magnitude of the standard fee like 66 percent?

MR. OWENS. Oh, no, no, hardly in that area, no.

COMMISSIONER MITCHELL. That, by the way, is the general negotiated fee for university management of scientific contracts.

MR. OWENS. Not the University of California, sir. Ours is around 45 percent I understand.

COMMISSIONER MITCHELL. So you have 45 percent more out of the contract than you spend here?

MR. OWENS. Not this contract. This contract happens to be a contract under which we do not charge the standard fee.

COMMISSIONER MITCHELL. Well, here you have Federal funds and freedom from taxes which means everybody else in this room who pays taxes pays for the operation of this organization, which I'm sure functions in the public interest or in the interest of some of the public. You have, it seems to me, an inescapable obligation to deal with the realities of Indian population in this area. And I must say that the figures are not inspiring at least as you look at them.

Mr. Powell.

MR. POWELL. Mr. Hendren, what type of business is your company involved in?

MR. HENDREN. We are in several types of businesses, including the hotel industry and the real estate and insurance industry, the construction of readymix industry.

MR. POWELL. Is that all in New Mexico?

MR. HENDREN. Yes, it is. We are also distributors of heavy equipment.

MR. POWELL. How much of the Springer Corporation is devoted to the hotel and construction equipment business? Let me begin this way: How many employees do you have?

MR. HENDREN. We have today 427 approximately.

MR. POWELL. How many of the employees of Springer are devoted to the hotel and construction equipment business of that 427?

MR. HENDREN. Well, about 220 of those are in the hotel business and probably another 100 in the construction phase of it.

MR. POWELL. How many persons are employed in your divisions by racial breakdown? Why don't you do it that way for us? Can you tell us?

MR. HENDREN. Well, you're asking me to take the 427 and break that down for you?

MR. POWELL. And break it down by division and ethnic background.

MR. HENDREN. I don't have those figures. You'd have to take about 220 for the hotel division and I'm saying approximately 100 in the construction industry, and then our real estate and insurance industry or division there, there's probably 50 people there, and the balance would be in the moving and storage division, administrative area.

MR. POWELL. 200 in the hotel construction business equipment?

MR. HENDREN. Yes.

MR. POWELL. Of that number how many are Indian?

MR. HENDREN. We have in the whole company— I don't know exactly in that breakdown by that particular divisional breakdown. We have today seven Indians.

MR. POWELL. Seven Indians?

MR. HENDREN. Yes, sir.

MR. POWELL. You don't know where they are located?

MR. HENDREN. No. I know approximately. I know one is in a supervisory capacity. The other six are not.

MR. POWELL. In what capacity are the bulk of your Indian employees employed?

MR. HENDREN. Only three of those people are over in the hotel, which would be in the food service area in the hotel. The others are skilled people, either mechanics or mixer drivers or moving and storage over-the-road drivers.

MR. POWELL. Would you provide us with an ethnic breakdown at some subsequent date? Would you mail that to us?

MR. HENDREN. I'd be happy to.

MR. POWELL. I would appreciate that.

[The information requested is in Commission files.]

MR. POWELL. Mr. Hendren, in your opinion, what accounts for the low employment rate at Springer for Indians?

MR. HENDREN. Well, I think probably it's the skilled nature of most of our jobs. Quite frankly, we have had very good results with the Indians that we have employed, and we would

like to have more of them. The ones we do have have been excellent employees.

MR. POWELL. Do you mean to tell me that most of your jobs require the kind of background from the standpoint of skill that Indians don't meet those requirements?

MR. HENDREN. No, just the reverse. They do. They would meet—

MR. POWELL. They do?

MR. HENDREN. If we could get more of them, we'd take them in all categories.

MR. POWELL. Then why is it you only have seven? Why do you suppose you only have seven if there are a number of Indians who would be qualified to work for your company?

MR. HENDREN. We haven't had the applicants for them, and the efforts that we have made to hire them, we haven't had the Indians apply. We'd take more if we could get them.

MR. POWELL. You have made efforts to get them?

MR. HENDREN. Oh, yes.

MR. POWELL. What kind? Would you describe some of those efforts?

MR. HENDREN. We advertise, for example. We don't advertise by that particular group, but we do advertise these skilled positions and interview for them.

MR. POWELL. You don't advertise by what again?

MR. HENDREN. By the groups that you're talking about, like ethnic groups, Anglo Americans and so forth. But we do, you know, within the company, of course—

MR. POWELL. That might be a violation of the law if you do that.

MR. HENDREN. Sure. But we do try to hire them, and we have gone on the reservation. We work with them on sand and gravel lands. So we are pretty familiar with what is available.

MR. POWELL. Have you attempted to get assistance in your recruitment efforts from the Bureau of Indian Affairs?

MR. HENDREN. Not yet, no. We really haven't.

MR. POWELL. Why not?

MR. HENDREN. I really can't answer that. We just haven't done it. I think probably we haven't done enough as an employer in this area.

COMMISSIONER RANKIN. Could I ask what has been your history with the Indian employment, those who have worked for you?

MR. HENDREN. It's been very good. For example, we have had different phases of our particular company from time to time that have been good, like in the Gallup area. At one time

we operated a tankline division in the Gallup area. We had approximately 30 Indians employed when we had that division.

So it has fluctuated with our company's history and the different types of businesses we have been in.

MR. POWELL. I gather from staff inquiries that you have a rather significant number of Spanish surname employees. Is that correct?

MR. HENDREN. That's correct.

MR. POWELL. You feel that is a hindrance in the recruiting of Indian employees?

MR. HENDREN. Not necessarily.

MR. POWELL. Do each of you have affirmative action plans? I understand that Los Alamos Laboratories does. What about you, Mr. Hendren? Does Springer Corporation have an affirmative action plan?

MR. HENDREN. Our formal one has not been filed yet. It's being worked on at the present time.

MR. POWELL. You do have government contracts?

MR. HENDREN. We have some with our paving division, highway paving division, that come up from time to time on short-duration basis.

MR. POWELL. By virtue of that, you would have to file an affirmative action plan?

MR. HENDREN. That's correct.

MR. POWELL. Do you feel if you were to file one that it would be sufficient to meet— Would it be approved if submitted?

MR. HENDREN. We feel it would be, yes.

MR. POWELL. I think you ought to try to look into getting a few more Indian employees. I commend you to that.

What about you, Mr. Jenks?

MR. BUGGS. Well, I wonder if I could ask Mr. Hendren whether or not in the affirmative action program that you are working on you have set forth or do you intend to set forth goals and timetables for the employment of American Indians?

MR. HENDREN. Very definitely. As a matter of fact we are opening a new hotel in the Santa Fe area, and we intend to use that—

MR. BUGGS. What will those goals and timetables be based on? How will you arrive at your figures?

MR. HENDREN. We will try to do it in terms of our overall employment, in relationship to the other groups too, of course. But, as I said, we think we are a little low in the Indian group at the moment, and we need to increase that, so we will be raising those goals substantially in the Indian area.

MR. POWELL. Do you have any idea what those figures are?

MR. HENDREN. At the time I don't know, sir.

MR. BUGGS. Thank you.

MR. POWELL. Mr. Tarbox, what about your company? I take it your company has a number of Federal contracts also? Is that correct?

MR. TARBOX. As with Los Alamos, we are 100 percent Government funded.

MR. POWELL. How many Indians are employed? What's your total employees in Sandia?

MR. TARBOX. Currently, 6,237 at Albuquerque. We have an additional 1,000-plus at Livermore, California, and Tonopah, Nevada.

MR. POWELL. Let's focus on Albuquerque.

MR. TARBOX. Focusing on Albuquerque, we have 44 Indians.

MR. POWELL. Forty-four Indians out of 6,200 and what was that?

MR. TARBOX. Thirty-seven.

MR. POWELL. 6,237?

MR. TARBOX. Yes.

MR. POWELL. To what do you attribute such a low number of Indian employees?

MR. TARBOX. We're comparable in many respects to Los Alamos in that some 2,500 of our employees are professional, generally requiring advanced degrees. Another 1,500 are the technician level, generally requiring the 2-year tech institute training. The balance are manual and clerical workers.

We attribute our low numbers to a variety of factors. First, as with Los Alamos, we have in the past 5 years had an overall reduction of 12 percent, 180 people.

MR. POWELL. But that wouldn't be pertinent unless it had some kind of impact on your Indian employees, would it? If 10 years ago you didn't have Indian employees and don't have any now, the fact you went up and down doesn't affect—

MR. TARBOX. It has had the impact that our hiring programs have reduced to— For instance, in 1972 we hired a total of 109 people, and over half of those were hired in the advanced science and engineering degrees. During that same period, though, I think it's worthy to note that the total minority employment increased by a figure of 103 while the total force has gone down.

MR. POWELL. That might have something to do with the 1964 Civil Rights Act which was passed, wouldn't it?

MR. TARBOX. Certainly it would. In 1964 we joined the Plans for Progress, the Civil Rights Act.

MR. POWELL. I see. Well, I take it you have an affirmative

action plan. Has that been reviewed recently?

MR. TARBOX. We submitted one in May of this calendar year through the AEC as the compliance agency for Sandia.

MR. POWELL. Has it been approved?

MR. TARBOX. To my knowledge it has, yes. I have not had a refusal of it.

MR. POWELL. Does your affirmative action plan—in view of your low numbers, does it contain specific provisions having to do with recruitment of Indians?

MR. TARBOX. It does not speak specifically to Indians. It speaks to the general improvement of the minority employment in all classifications at Sandia.

MR. POWELL. Do you feel that by employing minorities generally your affirmative action plan would be adequate if you had a very low percentage of Indian employees in a State like that?

MR. TARBOX. Certainly not.

MR. POWELL. I see. Well, in order to meet your obligation with respect to potential Indian employees, don't you feel that the affirmative action plan should address itself to the problem of employing Indians?

MR. TARBOX. We did not address in it our formal plan. We have internal plans that do direct themselves toward correcting the deficiencies with regard to all the ethnic classes and females.

MR. POWELL. Does your company have an effective monitoring system to ascertain whether or not Indians are being afforded equal employment opportunity not only with respect to hiring but with respect to upgrading and that sort of thing?

MR. TARBOX. In the graded area, which constitutes about 2,000 of our jobs—it's the clerical and the manual—we have a post-and-bid system where each job that is open, any individual on the roll is entitled to bid on the job. The selection process then by the supervisor is monitored by the personnel organization, and certainly the personnel organization exercises a control and an enforcement, if you will, on the fair appraisal of minorities.

MR. POWELL. Would you care to comment on that, Mr. Canfield? And also this monitoring system, does it involve an exit interview type of program when Indians are leaving? Do you try to ascertain why they leave?

MR. TARBOX. We attempt to ascertain why all employees leave, and with particular interest in the minorities.

MR. POWELL. Okay. Mr. Canfield.

MR. CANFIELD. I can give the same answer on that count. As

regards promotions and so forth, yes, we have the same kind of system as Sandia. I think we may have gone a little bit further in that we also advertise our professional openings as well as our graded openings, and any employee is eligible to apply for these posted openings

We do require of the supervisors—and this doesn't work 100 percent, I'll grant you that—but we do require a statement from the supervisor who has the position as to why he has rejected the candidate, minority or nonminority.

MR. BUGGS. Mr. Powell, before we leave Mr. Tarbox, if I may, did I understand you to say that you have had a reduction in force in the last year or so?

MR. TARBOX. In the last 2½ years we have laid off 800, almost 900 people.

MR. BUGGS. How much turnover have you had during that time?

MR. TARBOX. In the same period we have had right at 550. I wouldn't gurantee the figure, but it's right in the order of 550 over the 2½-year period.

MR. BUGGS. In what job categories have you had the greatest turnover?

MR. TARBOX. The secretarial, clerical area.

MR. BUGGS. So that you would have had ample opportunity to employ a considerable number of persons in that category?

MR. TARBOX. Except for the fact that we have reduced the secretarial staff by almost 100.

MR. BUGGS. Well, what I'm—

MR. TARBOX. Hand in hand we have had layoff; we have had attrition, and we have used the attrition as a way to avoid layoff and have restricted our force.

MR. BUGGS. So that you have had— How many opportunities have you had to hire new people while your total employment has been going down?

MR. TARBOX. I don't have the figures offhand but—Well, last year 109 were hired.

MR. BUGGS. And of that 109, how many were American Indians?

MR. TARBOX. Seven.

MR. BUGGS. Thank you.

MR. POWELL. All right. Mr. Jenks, as senior vice president of the Albuquerque National Bank, would you tell us briefly what your responsibilities are?

MR. JENKS. Yes, sir. They are loans directly. I'd like to make clear that I really have nothing to do with personnel, I think as Mr. Perry knows.

MR. POWELL. I see. Well, that's all right. We're going to talk about your responsibilities.

MR. JENKS. All right, sir.

MR. POWELL. But just coincidentally, since you're vice president of the Albuquerque National Bank, let's talk a little bit about employment also.

MR. JENKS. All right, sir.

MR. POWELL. Approximately how many employees do you have at the bank?

MR. JENKS. Just over 600.

MR. POWELL. Of that number, how many are Indians?

MR. JENKS. I believe it's four.

MR. POWELL. Four?

MR. JENKS. Yes, sir. I don't believe it has changed since Mr. Perry was there.

MR. POWELL. I wonder if you could provide us with an ethnic breakdown including Indians and Mexican Americans and blacks of the bank also? Not now, but subsequently. Would you provide that to us?

MR. JENKS. Oh, yes, sir.

MR. POWELL. I'd appreciate it.

[The information requested is in Commission files.]

MR. POWELL. Now, in the last year, Mr. Jenks, approximately how many applicants have applied for small business loans at your bank?

MR. JENKS. I would say well over 100.

MR. POWELL. A hundred? That's about the typical number within a year's period?

MR. JENKS. Yes, sir.

MR. POWELL. How many of these applicants have been Indians?

MR. JENKS. For small business loans I would say no more—Individual Indians, probably none. Tribes or corporations of tribes, two or three.

MR. POWELL. Two or three tribes but no individuals?

COMMISSIONER MITCHELL. Probably it isn't evident, but there is a gentleman right here—[indicating]—

MR. POWELL. I see there is someone who did apply out there. So there was at least one individual. I don't know if he made a tribal application. Maybe he will testify during our unscheduled portion. There are 100 loan applications. How many loans were granted?

MR. JENKS. I would say a very high majority. I have no specific figures for you, Mr. Powell.

MR. POWELL. Percentagewise of 100 loans, how many, in ball park terms?

MR. JENKS. Oh, most of our SBA [Small Business Administration] loans, they come in very well prepared though— Now, these are generally from minority groups, and it's simply because most of them have not been self-employed before, and they seek help on applying for loans through other organizations that have been set up either locally or by the Federal Government or the State government. So the applications come in well prepared to us. In general, those applications are not even presented to us, in my opinion, unless the preparing group thinks they have reasonable chance of success, and I would say that probably three-quarters of them are approved by the bank.

MR. POWELL. You say there were two or three tribal loans. Do you know whether or not they would have been granted? They probably would have been granted then in view of your loan experience?

MR. JENKS. Well—

MR. POWELL. These loans are insured by the Government, are they not?

MR. JENKS. Ninety percent are guaranteed by the Government. I can think of two major tribal loans that have come in. One of them was not— Didn't you say the last year?

MR. POWELL. Well—

MR. JENKS. The Jicarilla Apaches applied for a loan from us probably over 2 years ago. That was granted. It was not an SBA loan. The Sandia Indian Industries, which is the Sandia Pueblo, applied for a loan through us and that was granted.

MR. POWELL. Well, I didn't ask for them by name.

MR. JENKS. I'm sorry.

MR. POWELL. It's all right. Why so few? Why so few loans from individual—no loans from individual Indians, you say, and two or three from tribes?

MR. JENKS. Well, I honestly can't answer the question. I don't know why there are so few.

MR. POWELL. We have heard in the course of our investigation that Indians can't get credit, that they have difficulty getting credit. On the one hand, they say the BIA doesn't provide them with the resources they need to develop their resources. On the other hand, they say without such assistance they can't get loans from private banks. Would you have a reaction to that?

MR. JENKS. Yes, I think that we are talking about two separate things. One is credit to Indian business or an Indian

going into business. There we have relatively no applications to my knowledge. There just aren't the applications.

As to applications by individual Indians for, let's take, for instance, car loans, home improvement loans, or something on that order, they are accorded exactly the same treatment and consideration as any other.

The difficulty there, and the reason I would assume for fewer approvals percentagewise than otherwise to other ethnic groups, is lack of stable income. And applying our rules of approval, lack of stable income is a disqualifying credit consideration.

MR. POWELL. I see. Mr. Jenks, to your knowledge, what is the percentage of Indian small businesses that succeed in the Albuquerque area?

MR. JENKS. Mr. Powell, I don't know of any.

MR. POWELL. Why is that? Why do those businesses, Indian business, generally not succeed?

MR. JENKS. I suspect it would probably go back to lack of proper counseling once they get into the business and keep the business operating.

MR. POWELL. I see. Mr. Jenks, how much tribal money does your Albuquerque National Bank control by way of Indian tribes' trust funds?

MR. JENKS. Trust funds?

MR. POWELL. Yes.

MR. JENKS. My guess would be we have none, but Mr. Perry may know better than that.

MR. POWELL. Maybe this terminology isn't right. I am given to understand by my staff that—

MR. JENKS. Oh, pardon me.

MR. POWELL. I'm given to understand—

MR. JENKS. I understand what you mean.

MR. POWELL. —that there are substantial monies deposited at the Albuquerque National Bank. Now, is that right or isn't it right? Would you give me some idea as to—

MR. JENKS. We are a co-trustee with three other banks in a substantial trust account which is fully invested in things other than bank, corporate stocks, bonds, other.

MR. POWELL. "Substantial" is sort of a vague word. Why don't we get into what we are talking about?

MR. JENKS. I believe the total is \$5 million.

MR. POWELL. \$5 million. That's a substantial benefit to your bank I take it?

MR. JENKS. We receive a fourth of the trust fees earned from the investment and management of the account.

MR. POWELL. Now, are there other deposits by tribal groups in your bank? Are there any other, other than this co-trusteeship \$5 million account?

MR. JENKS. I'm certain that we have accounts from some of the pueblos. I know we have accounts from individual Indians. I know of no, once again putting it in the category of substantial, other ones.

MR. POWELL. We hear all this business on TV and whatnot about a full service bank and its obligations to the community and—

MR. JENKS. It's our competitor.

MR. POWELL. I take it that the Albuquerque National Bank is no exception—

MR. JENKS. That's correct.

MR. POWELL. —and that the citizens of this community, including Indians— I take it you feel an obligation to Indians—

MR. JENKS. Yes, sir.

MR. POWELL. —as citizens of this community. Well, what do you think the bank ought to do to provide? Do you think that there ought to be a program to provide assistance from the standpoint of getting loans, from the standpoint of giving technical assistance to tribal groups if they need it? What are your views on that?

MR. JENKS. I would say that I would like to have our bank staffed to the extent where we could perform this function.

MR. POWELL. It might help if you had a few more Indian employees who knew how to relate to the Indian community then, wouldn't it?

MR. JENKS. It might very well.

MR. POWELL. Do you suppose you ought to look into that and try to do something about it?

MR. JENKS. Well, we have one exceptional Indian employee, and it's my opinion that this young man, who is now on leave of absence and going to get his last year of college completed in accounting, might very well lead to just exactly that type of relationship between our bank and the Indian community.

MR. POWELL. What was this? I'm sorry. I missed the first part of it. This is an employee—

MR. JENKS. We have an Indian officer in our bank among our officer staff who is presently on leave of absence finishing his last year in college to get his degree in accounting. I think it's very possible— He has been working—

MR. POWELL. That's very good. But, of course, you know, as a minority person myself I suspect that Indians might very well feel the same way: You are not going to have your "bank

Indian" I hope. Can't you find people to train for cashiers and to be messengers?

MR. JENKS. Mr. Powell, our biggest problem in the bank—and it's somewhat related to these other industries—is the lack of applications. We have very few Indians apply at our bank. And as to why they don't apply, I can only assume that they think it takes certain technical skills which we don't really require because we can train bookkeepers; we can train tellers, and so forth.

I think they think—they, the applicants think—it takes an over-amount of education to at least—certainly through high school—and it does not. If they come in and have some sort of background in business or work, we are perfectly willing to hire them.

MR. POWELL. Do you think it might be helpful to use more affirmative techniques?

MR. JENKS. Well, you are getting into the personnel problem. I can only tell you some things that I have heard. We have, for instance, constant communication with an organization called the Southwest Polytechnic Industrial Institute or something of that nature. We ask them constantly to send us people. They have sent us some. We have hired some. We are in constant contact with TVI [Technical Vocational Institute]. However, I must say that that is predominantly Chicano-oriented and we haven't gotten any, to my knowledge, Indian referrals from that group.

We recruit in the high schools, which is obviously a poor source for getting Indians. There are not many Indians in the high schools. But we send out people to the high schools to speak about banking, hoping that they will come in and apply.

Now, of the few that we have hired, one of the biggest problems we have had is voluntary termination on their part, people who have worked maybe 2 or 3 days and left. Now, whether it is because they felt they were incapable of holding the job that they got, and I don't think that should have been the case—

MR. POWELL. I would hope you wouldn't leap to that assumption.

MR. JENKS. With them it was voluntary termination.

MR. POWELL. Did you give them exit interviews?

MR. JENKS. Yes, sir.

MR. POWELL. What kinds of things do you find?

MR. JENKS. Most of them that I know about—and understand I'm not, once again, associated with personnel—most of them have said they had to go back to the reservation, which is

something I absolutely fail to comprehend.

MR. POWELL. Mr. Chairman, I have no further questions.

COMMISSIONER MITCHELL. Commissioner Rankin?

COMMISSIONER RANKIN. I'd like to try to summarize your testimony. Where nontechnical jobs are concerned, most of you agree that there is no discrimination whatsoever against Negroes or minority races. What keeps them out of higher jobs is the higher requirements—is that right—for these jobs? Once they qualify you say that there is no discrimination against them? Is that correct?

MR. CANFIELD. Yes.

MR. HENDREN. Yes.

MR. TARBOX. Yes.

MR. JENKS. I think that's correct.

COMMISSIONER RANKIN. That's what all of you agree. Now, what are we going to do about this then? Here's the problem. The affirmative action program hasn't solved this problem, has it? Do you think so? Or has it done any good whatsoever?

MR. JENKS. The affirmative action program has certainly gotten at least our organization going out and recruiting minorities, which we went out and recruited in general before, and now we go out and specifically recruit minorities. To that extent I think it's been helpful.

COMMISSIONER RANKIN. Can anybody else speak to that part?

MR. TARBOX. I would agree with Mr. Jenks. I think, secondly, that the affirmative action plan at Sandia is distributed to all supervisors, makes all supervisors aware of the company's goals and the company's intent to meet its goals.

COMMISSIONER RANKIN. And it has increased some Indian employment but not very much? Is it fair for me to say that?

MR. TARBOX. Well, in a 5-year period we have increased from 29 to 44 while losing some 19. Admittedly, it's not a gross number growth, but it's a very difficult thing to grow while you are reducing your overall force by 12 percent.

COMMISSIONER RANKIN. Mr. Gutierrez?

MR. GUTIERREZ. I think that one thing has to be clarified, Mr. Rankin, and that is this: The affirmative action says "minorities." It doesn't say American Indians.

COMMISSIONER RANKIN. That's right.

MR. GUTIERREZ. It doesn't say Chicanos. It doesn't say blacks. And when people come into the personnel office or into my office, the equal employment office, the only identifiable ones are the whites and the blacks. How do I know a Chicano from an Indian? There are many Indians who have the same

name that I do, Gutierrez, and it's against the law to ask anybody his race, creed, color, or otherwise.

COMMISSIONER RANKIN. You never ask any question like that?

MR. GUTIERREZ. You can't.

COMMISSIONER RANKIN. You can't?

MR. GUTIERREZ. You cannot.

MR. BUGGS. You know where he comes from though, Mr. Gutierrez?

MR. GUTIERREZ. We have his application blank.

MR. BUGGS. If he comes from a pueblo, you know who he is, don't you?

MR. GUTIERREZ. You could, yes. But then I know a lot of— Well, we can make exceptions. It's true. But then take, for example, if he is a— Say he's a Singer or McDonald or what have you, how do we know, or if he's a Gutierrez? I'm part Indian, Mexican Indian.

COMMISSIONER RANKIN. Let me continue with my questioning. The affirmative action program has done some good then? You all agree to that, that it has?

MR. GUTIERREZ. Oh, yes.

COMMISSIONER RANKIN. Can I take another point? Why can't the University of California establish some scholarships or fellowships in the graduate school, since you are located in this Indian area, for Indians, just to have them for Indians? We have at our school some for women and some for Methodists and some for other groups like that. Why couldn't we do it for Indians in this?

MR. GUTIERREZ. We're doing that. We have—

COMMISSIONER RANKIN. How many did you say you have at California?

MR. GUTIERREZ. We have in our laboratory— We have at least three programs, Mr. Rankin. We have the YOC, the Youth Opportunity Campaign. I know it's for graduating high school kids, but then they come to our laboratory and spend the summers, at least 4 years, and we send them to college. We encourage them.

We have the Skills Training Employment Program. And right now our ratio runs from like 12 percent Indians that come. And we try to train them.

We have an agreement with the Association of Western Universities where we get people, but Indians do not apply.

We have a postdoctoral program. We have a machinist training program. We had one Indian apply, and last year one of them quit, and when we asked him why—well, first of all, we

couldn't find him. When we found him, he said he just— That sort of thing.

COMMISSIONER RANKIN. Possibly the evidence presented here might encourage them to apply. Don't you think so?

MR. GUTIERREZ. Yes. Mr. Rankin, we're really trying. We're really trying.

COMMISSIONER RANKIN. Now, is there any other thing we might do to help this situation? I'm just interested. I mentioned two here. Do you have any suggestions, any of you, for any program we might adopt?

MR. CANFIELD. On the business of scholarships, actually under our contract with the AEC we cannot provide a flat-out scholarship.

COMMISSIONER RANKIN. You can't provide what? Excuse me. I didn't hear you.

MR. CANFIELD. We cannot provide fellowships or scholarships under our contract with the AEC.

COMMISSIONER MITCHELL. You mean at the University of California?

MR. CANFIELD. Los Alamos Scientific Laboratory.

COMMISSIONER RANKIN. They could at Berkeley, couldn't they?

MR. CANFIELD. Berkeley can.

COMMISSIONER MITCHELL. Well, what is their business is your business though, isn't it?

MR. GUTIERREZ. [Shaking head negatively.]

COMMISSIONER MITCHELL. Do they know that?

MR. GUTIERREZ. [Nodding head affirmatively.]

MR. BUGGS. Do they contract with the University of California?

COMMISSIONER MITCHELL. Of course.

MR. BUGGS. Can't you make some stipulations in terms of whatever organization you contract with as to what kind of services you want?

MR. CANFIELD. You're getting above my level when it comes to contract negotiations. I'm not a part of them. I don't know whether—

MR. GUTIERREZ. Neither do I.

MR. CANFIELD.—counsel would like to speak to this or not.

COMMISSIONER RANKIN. We would like to hear him speak to it.

MR. OWENS. If you would, Mr. Rankin, that one point about setting up what we consider— Incidentally, this raises serious, significant question.

COMMISSIONER MITCHELL. Would you care to come up here?

MR. OWENS. This raises with the University of California what we consider a very significant and serious question. The concept of setting up a discriminatory scholarship is something which we would not be involved in.

COMMISSIONER RANKIN. You would call that discriminatory?

MR. OWENS. Absolutely. I see nothing else to call it.

MR. BUGGS. Against whom?

MR. OWENS. If we set up a scholarship for one particular ethnic group, I believe this is a discrimination against—

MR. BUGGS. Set one up for all.

MR. OWENS. Sir?

MR. BUGGS. Couldn't you set one up for every ethnic group?

MR. OWENS. We have open scholarships.

MR. POWELL. Mr. Staff Director, may I enter that discussion?

MR. BUGGS. Yes.

MR. POWELL. Because I perhaps missed something. What is there about a scholarship which would be designed for a particular ethnic group whose opportunities to receive education have been minor? What would be discriminatory about that?

MR. OWENS. Well, you know, now we are getting into a very significant legal argument which I know—

MR. POWELL. Well, you seem to raise the assumption that, ipso facto, a scholarship designed for a particular ethnic group would be a violation of law or be unethical or something like that, laws which set up preferences for different groups. The 1965 Voting Rights Act takes the authority from the State and provides an opportunity to register. Why is it that you feel that in light of the deprivation, in light of discrimination that a scholarship might not only be illegal but— It might be a very appropriate thing particularly for a public institution. Private institutions also.

MR. OWENS. Yes, I think the position that we take is that, rather than setting up preferences, these statutes you speak to and these acts you speak to on scholarships hopefully give all an equal opportunity, and we take the position that we will not set up any preferential scholarships.

MR. BUGGS. Except for Indians there is a preference clause in the 1964 Civil Rights Act for Indians.

MR. OWENS. Insofar as scholarships are concerned?

MR. BUGGS. As far as everything is concerned.

MR. POWELL. That's just employment I think.

MR. BUGGS. Only employment? Are you sure, John?

MR. OWENS. I'm quite sure of that.

MR. POWELL. We can't blithely speak about equal opportunity, can we, at a time when we have only 38 Indian M.D.'s in the entire country? We have not enough Indian teachers. We have Indian students who are dropping out. Don't we have to take some action to provide some services to these people? Or are we going to permit another generation of Indians to go uneducated, unemployed, and without opportunity?

MR. OWENS. No, I think the answer—

MR. POWELL. We can't speak about legalities in light of that sort of thing. We can't hide behind legalities, I should say. Can we?

MR. OWENS. Well, I don't think we're hiding behind legalities. Incidentally, I'm in full agreement with you that we have to do something. And I take it that this is the charge of the Commission, and it's the charge of the University of California, incidentally, too, under State statute, and so forth.

But I think the point I try to make is rather than hide behind legalities, being a lawyer as you, I think we just have to make our own interpretation of what the legalities are, and my point is that we do not feel that we can establish what we would consider to be a discriminatory or more than one discriminatory scholarship.

COMMISSIONER RANKIN. This is going to be an interesting world when we have got to give scholarships to men in domestic science because we give them to women. Isn't that right?

MR. OWENS. Yes, sir.

COMMISSIONER MITCHELL. Just speaking as a university president for a moment, the graduate school of social work at my university has just agreed that for the next 3 years it will give 100 percent of its Federal grant scholarships to minority students, not 97½ but 100 percent. What we're saying is that we're 108 years old and 3 years out of 108 is not all that discriminatory. And we're trying to restore the balance to that school.

So I think it's entirely possible for the University of California, looking at its problems horizontally as well as vertically in this sense, to find some way to deal with that. You would take an alumni scholarship which is available to the children of alumni. You would take and have taken highly specialized scholarships in the university's endowment and special fund, I'm sure.

But I think perhaps we're getting out of the area of employment here.

MR. POWELL. Just to clarify the record, may we have your name?

MR. OWENS. Mark Owens. I'm associate counsel for the University of California.

COMMISSIONER MITCHELL. The University of California, as you must know, is in an interesting situation here. It's in another State, which raises some interesting questions for me as a university president, as a private university president. I didn't realize that State universities could hop all over the United States setting up tents and seeking Government grants, and I think that matter ought to be looked into on general principles.

[Laughter.]

In addition to which, it seems to me that there are some special problems about employment obligations under those circumstances. And we could get into that endlessly. But we're really trying to concern ourselves with problems of private employment here.

Mr. Avena—

COMMISSIONER RANKIN. Can I go back—

COMMISSIONER MITCHELL. Let me get Commissioner Rankin. Mr. Avena has a question. And after you are finished I'd like to hear him.

MR. AVENA. Mr. Gutierrez, could you comment on— The thought has occurred to some of us, and it has come to us sometimes as complaints, that a lot of Federal contractors and Federal agencies that have affirmative action programs deal primarily in the Chicano community, the Spanish speaking community, at the expense of the Indian community. Now, I think you touched on that just a little while ago. And could you give me your observations on that?

MR. GUTIERREZ. In our office, our office is known as the equal employment opportunity office. It is not known as the Chicano office or the Indian office or the black office or the Oriental office or the—I think they were called white Anglo. I just learned that today—white Anglo. That's not the term we use.

[Laughter.]

COMMISSIONER MITCHELL. What term do you use?

[Laughter.]

MR. GUTIERREZ. White Anglo.

[Laughter.]

COMMISSIONER MITCHELL. I thought you might say "majority."

MR. GUTIERREZ. Or "majority." Okay.

Now, I think, Mr. Avena, to answer your question, it is very interesting. When you have a group of activists on the distaff

side who come in and want to be recognized and they want a greater portion of the pie, immediately following them comes a band, a group of Chicanos, and they want more representation because their ethnic proportion in the State is much greater.

Following them come the Orientals. They want a portion of the pie. Following them come the Indians. And since they live in the northern part of the State, they also want a portion of the pie. And then behind them come the blacks, and the blacks also want a portion of the pie.

And for us to say that we are going to set a quota up for so many Indians or so many Spanish just runs against— You'll have everybody quarreling against each other. You cannot have that. It's bad enough to survive against the majority right now.

To start saying we will set up 10 scholarships for Indians and only Indians— Because the Chicano says, "Well, how about us?" Or the blacks. And this, gentlemen, has actually happened. Does that answer your question?

MR. AVENA. Not really. I really just wanted your opinion as to whether the Indian or the Chicano— In other words, when you think of New Mexico from Washington, D. C.—and I lived in Washington and worked for Federal agencies—when you think of affirmative action programs, people automatically think of Chicanos. And all I'm saying is: Is this at the expense of the Indian, in your opinion, in complying with the requirements of a Federal contract?

MR. GUTIERREZ. Well, to the point of being controversial, I think that, for example, in my office I have had it said by the blacks that regardless of what percentage they have in New Mexico they want to be represented on the national average. Now, you speak of the Chicanos. Is that fair to the Indians? Who is to give the answer? All we are there for—all we are there for in our office—is to try to hire Indians, not to solve these particular problems. We can't. We cannot be partisan.

MR. AVENA. Thank you.

COMMISSIONER RANKIN. I'm going back to my original question if I may, Mr. Chairman. We are trying to find out if there is anything that could be done about this situation. We mentioned that the affirmative action program had done some good. And then this matter of scholarships was brought up. I ask you, gentlemen, if there is any other suggestion you might have that might help this situation insofar as employment is concerned?

MR. TARBOX. If I may, what we have done has obviously not been successful, but I think we must continue it, intensify it,

and make it work.

Over the past 3 years we have had tribal leaders spend the day with us on three different occasions. We have tried to explain to them our interest in their people coming to work and applying for work. We have shown the work.

Over this same period we have had close to 600 students, Indian students, tour our laboratories to see the work that is there—the human witness, the living witness program of trying to make those children understand that Sandia is a place where they can aspire to work.

We have got to figure out how to bridge that gap from the company's intent, which is a real intent, to the belief that brings the students, brings the children, or brings the Indians into Sandia to apply. I don't know how to bridge that gap.

I think what Conrad has spoken of and what we have to some degree spoken of is the long-term. Certainly in the long term there has to be improvement for the Indian and for other ethnic groups in educational fields to bring them up in a real competitive situation. But I think a more important thing for today is how to bridge that gap of making them believe that we are serious in wanting to hire them.

COMMISSIONER RANKIN. Thank you.

COMMISSIONER MITCHELL. There being no further questions, I would just comment on the difficulty of this problem, and I realize that we have been aggressive in our discussion of it.

I come out of the business world, by the way, and I have some sense of the nature of this problem, and I have strong feelings that my old colleagues in business have not done as much as they should have. On the other hand, I have some sense of the drives that motivate them too.

But the problem is that we must deal with the problem. This is 1972, and we are talking about people in this room and in this State who have been waiting more than 100 years to be dealt with like human beings and not like animals and not like serfs and not like slaves and who have a right to be recognized as people with a sense of opportunity in the future. And the only hope for them really is not to keep working for the Government and the State but to work in the growing American industrial and commercial sectors.

Now, the Civil Rights Commission is often called the conscience of the United States Government, and it is the conscience of the Government, because it is that agency which examines the Government to see whether it is obeying its own laws. When the Civil Rights Act is passed by the people of the United States through their Congress, it is incumbent upon

the Government of the United States and its agencies to enforce those laws and those Executive orders. One of the ways the Government can do that is to spend its money with people who in turn enforce them, and that is why you are singularly susceptible to the affirmative action implications of affirmative action programs and to examination by this Commission. The investigation is not done in hot pursuit, but with the same determination I hope you have to deal with this problem.

Now, the Civil Rights Commission knows that it is doing the work of the Lord, and in the end it's going to win, and maybe that is the biggest message that this hearing can communicate to American industry or industry in New Mexico, and that is that the minorities will emerge as full-fledged citizens of this country eligible to work everywhere and able to work everywhere and welcome everywhere they go as full partners in democracy.

Well, thank you, gentlemen, for joining us.

The Commission will now be in recess for 10 minutes. We will reconvene then at 25 minutes to 7.

[Whereupon, a recess was taken.]

COMMISSIONER MITCHELL. The Commission is now back in session. This hearing will proceed with panel number two, which is a private employers' panel.

Will Mr. Donald Cata of RCK, Inc., come up to the front of the room, please, and Mr. Tom Watzlavick of Levi Strauss and Company?

Gentlemen, will you identify yourselves, please?

MR. CATA. Donald Cata, RCK Corporation.

MR. WATZLAVICK. Tom Watzlavick, Levi Strauss and Company.

[Whereupon, Messrs. Donald Cata and Tom Watzlavick were sworn by Commissioner Mitchell and testified as follows:]

TESTIMONY OF MR. DONALD CATA, RCK, INC., AND MR. TOM WATZLAVICK, PERSONNEL MANAGER, LEVI STRAUSS AND COMPANY

COMMISSIONER MITCHELL. Thank you.

Mr. Powell.

COMMISSIONER MITCHELL. Mr. Cata, what is RCK, Inc.?

MR. CATA. It's a 100 percent American Indian corporation. My tribal affiliation is with San Juan Pueblo.

MR. POWELL. When was RCK created? You say it was created by Indians. When was it created by Indians?

MR. CATA. In November of 1970.

MR. POWELL. What type of business is RCK engaged in?

MR. CATA. We are a licensed general building contractor. We have operations and maintenance. We have warehousing. We have what we term new programs and also data processing.

MR. POWELL. How many people does your corporation employ, Mr. Cata?

MR. CATA. In permanent positions, approximately 50. Overall right now 78, which includes our construction. We have 60 Indians, 13 Spanish, and 5 Anglo, or 78, total of 78 people.

MR. POWELL. We have heard a lot of testimony from various company officials about the difficulty in hiring Indians. How is it that you are able to hire such a high number of Indians?

MR. CATA. Because there are so darned many ongoing programs here that you can go through and contact people. You can go through the employment assistance with the Bureau of Indian Affairs. You can go through State employment service, State of New Mexico. You can contact individual tribes, governors, council people. And by word of mouth.

MR. POWELL. Mr. Watzlavick, tell us something about your company. What do you do?

MR. WATZLAVICK. We are an apparel manufacturer. Our headquarters are in San Francisco, California. We have been in operation since 1850. We have been in Albuquerque for 6 years.

MR. POWELL. You produce apparel here? Are they pants? Levi Strauss?

MR. WATZLAVICK. Pants. Right.

MR. POWELL. How many employees do you have?

MR. WATZLAVICK. We have approximately 694.

MR. POWELL. Of that number, how many are Indians?

MR. WATZLAVICK. Forty-two.

MR. POWELL. Do either one of you— Do you have a problem with absenteeism, tardiness, drunkenness with your employees? Mr. Cata?

MR. CATA. I don't think so any more than any other company employing any other group of people. We don't encounter anything that states an Indian is [prone to] drunkenness. No, I think you have the same percentages with our Indian people as, say, Albuquerque National Bank would have with their white Anglos as far as drunkenness would be concerned.

MR. POWELL. Mr. Watzlavick, what type of training program does your company have for upward mobility within the company structure and self-enhancement for employees?

MR. WATZLAVICK. We have an affirmative action program

whereby employees are encouraged to complete a questionnaire stating their desires to advance, and these are reviewed periodically both here in Albuquerque and at our division office.

MR. POWELL. Mr. Cata, does your company have any Federal contracts?

MR. CATA. Yes. Approximately 70 percent of our work is done under Federal contract. The rest is on the open market.

MR. POWELL. Have you had any difficulty in obtaining Federal contracts?

MR. CATA. No.

MR. POWELL. I have no further questions, Mr. Chairman.

COMMISSIONER MITCHELL. Mr. Buggs?

MR. BUGGS. No questions.

COMMISSIONER MITCHELL. Mr. Cata, Mr. Watzlavick, both of you employ Indians and seem to have no problem working them into your ongoing operations. Maybe I can ask Mr. Cata first. Do you meet with the personnel directors of other Albuquerque firms of the kind we had in this prior panel?

MR. CATA. No, sir, I do not.

COMMISSIONER MITCHELL. Any reason why you don't? I mean, isn't there a personnel managers' club here?

MR. CATA. At this particular moment in time we are still a growing organization, and we are trying to develop more and more work, so we just haven't had time for it.

COMMISSIONER MITCHELL. Do you have any feeling that they are unduly restrained in their use of Indians? Do you think that— Did you hear the discussion?

MR. CATA. Yes, I did. I think there is a huge market of American Indians out here. In fact, we have quite a few we turn away daily that come to our office and try to put in an application. But we only have so much work, and it takes time to keep developing more work.

COMMISSIONER MITCHELL. But you think they are employable and that it would be constructive use of the Indian to employ him at the companies we have just heard from?

MR. CATA. Oh, yes, sir. In our particular program here we do everything from maintaining and repairing electronic equipment, very sophisticated equipment, to housekeeping. So we run the full gamut.

COMMISSIONER MITCHELL. They do all those things at the University of California or Sandia or Los Alamos, don't they?

MR. CATA. Yes. We feel in our company that the American Indian has the same amount of native talent that any other ethnic group or Anglo or black or Mexican American has.

COMMISSIONER MITCHELL. Thank you.

MR. CATA. It's a question of developing it.

COMMISSIONER MITCHELL. Mr. Watzlavick, do you have any feelings on that same subject? Do you ever meet with the personnel people?

MR. WATZLAVICK. Yes, sir.

COMMISSIONER MITCHELL. Does the subject of Indian employment ever come up?

MR. WATZLAVICK. Very occasionally. Not very frequently at all.

COMMISSIONER MITCHELL. On the whole, do you think your colleagues in personnel in other companies are doing a sufficiently aggressive job of recruiting and training and employing Indians?

MR. WATZLAVICK. I believe so. I think the largest measure of indication on that factor would be whether or not you are in compliance in maintaining—

COMMISSIONER MITCHELL. Well, you're employing what? About 6 percent of your present staff is Indian? Right?

MR. WATZLAVICK. Yes, sir.

COMMISSIONER MITCHELL. And most of the people who testified here were lucky if they had 1 percent, 2 percent. Do you think your percentage is possible for them?

MR. WATZLAVICK. It depends on the type of jobs they have available. Approximately 80 percent of our jobs have no educational requirements to speak of. They are skilled. And the people in our training program, which varies from 2 to 5 months, mainly training to be a sewing machine operator.

COMMISSIONER MITCHELL. What is the average educational level of the Indian you employ?

MR. WATZLAVICK. I would say probably 10th or 11th grade.

COMMISSIONER MITCHELL. Do you have any college trained Indians?

MR. WATZLAVICK. We have one who is in a supervisory capacity who has had some college.

COMMISSIONER MITCHELL. So you find that with adequate education there are no limits really to the extent to which you can use Indians?

MR. WATZLAVICK. Would you repeat that?

COMMISSIONER MITCHELL. With adequate, with proper education, there seem to be no inherent limits to the Indian's ability to occupy any job in a company like yours? Right?

MR. WATZLAVICK. Correct.

COMMISSIONER MITCHELL. Well, gentlemen, I have no further questions, and thank you very much. You have demon-

strated in your testimony that some assumptions that some people make about the availability of Indians in industrial activity here and the competence of Indians are just unfounded.

Thank you.

We now have a Federal employees' grievance panel. I hate to use the word "complainant" which is the way we have described it in our agenda. But I'd like to have at the witness stand Ruth Paisano, Matt Waconda, Frank Roberts, and Don McCabe. Will they come forward, please?

Would you identify yourselves from left to right, please?

MR. WACONDA. Yes, sir. My name is Matt Waconda, and I am employed as a safety officer with the U. S. Bureau of Indian Affairs here in Albuquerque.

MS. PAISANO. My name is Ruth Paisano, and I am a secretary with the Bureau of Indian Affairs at the Albuquerque area office.

MR. MCCABE. My name is Don McCabe, and I am not employed by the BIA, but I have applied to them. I am presently employed by the University of New Mexico.

MR. ROBERTS. I am Frank Roberts. I am an employee with the Bureau of Indian Affairs.

[Whereupon, Ms. Ruth Paisano and Messrs. Matt Waconda, Frank Roberts, and Don McCabe were sworn by Commissioner Mitchell and testified as follows:]

TESTIMONY OF MS. RUTH PAISANO, MR. MATT WACONDA, AND MR. FRANK ROBERTS, EMPLOYEES, BUREAU OF INDIAN AFFAIRS, AND MR. DON MCCABE

COMMISSIONER MITCHELL. Mr. Powell.

MR. POWELL. Ms. Paisano, you mentioned that you are a secretary with the Bureau of Indian Affairs. How long have you been employed in that capacity?

MS. PAISANO. I have been a secretary for about 23 years. I have worked with the Bureau of Indian Affairs about 23 years.

MR. POWELL. You have been employed for 23 years? What is your grade level, Ms. Paisano?

MS. PAISANO. I am GS-5 at the top level.

MR. POWELL. You are GS-5 after 23 years of employment? Are you a high school graduate, Ms. Paisano?

MS. PAISANO. Yes, I am a graduate from the Albuquerque Indian School. And then I have also gone to postgraduate or have done postgraduate work and was an arts and crafts instructor at the Albuquerque Indian School. I also took some courses at the Catholic Teachers College and went to Haskell Institute in Lawrence, Kansas, for my secretarial training.

MR. POWELL. As I understand it, you have 2 years' training, college training, beyond the high school level. Is that correct?

MS. PAISANO. That is correct.

MR. POWELL. Ms. Paisano, do you feel that your education and experience have helped you to progress at the Bureau of Indian Affairs? You have a considerable amount of education. You have a considerable amount of experience. Do you feel that you have progressed consistent with that training and that background at the Bureau of Indian Affairs?

MS. PAISANO. No, I don't believe I have. I believe with my knowledge and the training that I have gotten should at least have gotten me in a higher position than what I am.

MR. POWELL. Based on your 23 years in the Bureau of Indian Affairs, do you feel that there are other Indian people employed by the BIA who are in situations similar to yours?

MS. PAISANO. That is correct.

COMMISSIONER MITCHELL. Would you please speak a little louder because people in the back of the room can't see you, and you have to speak a little louder if they are to hear you.

MR. POWELL. To what do you attribute your inability to move up the ladder at the Bureau of Indian Affairs, Ms. Paisano? To what do you attribute your inability to move up the employment ladder? Why is it that you haven't been able to get promotions over the years, notwithstanding your outstanding qualifications?

MS. PAISANO. I really couldn't answer that question, but I do have a feeling that when you more or less make or have made complaints, which I had some years back, this has hindered my position, and as a result I don't think I have been given a chance for any promotional opportunities.

Now, I have had, well, I think quite a few honors I might say. I am recipient of the Superior Performance Award and—

MR. POWELL. When was that, Ms. Paisano?

MS. PAISANO. That was in about 1960, I believe. I'm not too sure of the exact date. And then I have been nominated for the New Mexico Public Service Award for my contribution to public service. And I have also been nominated for recognition among the Indian women leaders. But none of these things have really gotten me anywhere as far as promotional opportunity is concerned.

MR. POWELL. Mr. Chairman, at this point I'd like to have entered in the record the awards to which she referred. We have them and will see to it that they are entered.

COMMISSIONER MITCHELL. They are hereby ordered to be entered in the record.

[Whereupon, the documents referred to were marked as Exhibit No. 9 and received in evidence.]

MR. POWELL. I take it that these awards identify you as a person who would in the ordinary course be considered for promotion? Is that correct?

MS. PAISANO. That is correct.

MR. POWELL. Do you think that part of the problem extends to insensitive attitudes on the part of supervisors within the Bureau of Indian Affairs? And have you had experiences which manifest that kind of attitude?

MS. PAISANO. Well, I had just one experience to that effect, and this, of course, may have hindered my opportunities to get any higher than what I am.

I might also state that I have been the head secretary at the United Pueblos Agency where I had worked for about 2 years as secretary for the administrative officer. And there I trained secretaries and held secretarial meetings or clerical meetings you might say where we discussed a lot of policies and so forth. So I handled all of the meetings that we had with these secretaries. I set them up, and so forth.

And then I have also been the head collection officer where I trained other collection officers who have come into the agency office. And then I have been the civil service examiner for about 10 years.

MR. POWELL. You mentioned that you trained secretaries. Have you ever supervised or trained a secretary who later became your supervisor?

MS. PAISANO. I really don't— Yes, I guess— well, not really my supervisor but they have—

MR. POWELL. A higher grade than you?

MS. PAISANO.—received a higher grade than I have.

MR. POWELL. Ms. Paisano, have you had occasion to see tribal leaders come to the BIA office and have conversations with civil servants superior to you and then, when those tribal leaders leave, offensive comments have been made about those tribal leaders?

MS. PAISANO. Yes. Of course, I am very active in tribal affairs. I have worked with the tribal people since about 1954. Now, I am a member of quite a few organizations such as under the All Indian Pueblo Council, under the manpower planning, and other advice—or chairwoman of the Acoma Community Action Administering Board, and I have been the chairwoman of the policymaking committees. And I mean there's quite a few that I really can't mention.

MR. POWELL. Getting back—

MS. PAISANO. I just counted the other day how many of the different boards and committees I have served on, and there were at least 18. And these are all tribal—

MR. POWELL. I see.

MS. PAISANO.—committees.

MR. POWELL. Getting back to these offensive comments, to which reference has been made, by Bureau of Indian Affairs officials subsequent to speaking to Indian tribal leaders, did you have occasion to discuss such an incident with one of your superiors?

MS. PAISANO. Yes, I had.

MR. POWELL. Would you tell us about that and what happened?

MS. PAISANO. Well, back in 1960 when I worked with the United Pueblos Agency, the administrative officer at that time quite frequently made derogatory remarks against the Indian people, and I didn't really say anything right at the time. But it eventually got under my skin, and, of course, I did make some comments and almost immediately they made the change against my will to change me to the Albuquerque area office simply because I—

MR. POWELL. You were transferred?

MS. PAISANO. Right—I was too involved with the Indian people.

There were two of us in the office. There was one Spanish American girl who was the secretary, but the Indians that came into the agency office would immediately come over to me simply because they got to know me as I had been there, like I said, for 12 years. And they immediately would come over and talk with me to tell me their needs and so forth. And usually I acted as the interpreter. In fact, that has been included into my position description, to act as the official tribal interpreter. And so I interpreted quite a bit and went out to the various tribal meetings to discuss budgets where I would explain the program and their tribal money.

MR. POWELL. Thank you.

Mr. McCabe, would you please briefly describe your educational background and previous work experience?

MR. MCCABE. I graduated from the University of New Mexico with a B.B.A. degree in 1970, and in 1972 I got my master's degree in business administration. Prior to this I had 8 years of military service as a first sergeant in the Army, and subsequent to that I was a department head with a local engineering firm for about 9 years from 1957 to 1966.

MR. POWELL. Mr. McCabe, have you ever attempted to

obtain a position with the Bureau of Indian Affairs?

MR. MCCABE. Yes, on several occasions, but the most recent ones were in 1969. After I finished my junior year in college and had several computer programming courses at the University of New Mexico, I applied for a position with the data processing center down at the Federal Building. And the only thing that they would consider me for was at a GS-2 level.

MR. POWELL. GS-2?

MR. MCCABE. GS-2.

MR. POWELL. And at that time you were a junior in college?

MR. MCCABE. Junior in college and I had two computer programming courses, yes, sir.

I was interviewed for the job by about three supervisors and the woman who would be my immediate supervisor, should I have accepted the job. But when I went there and asked them about the job, they said that they had nothing but a sorter's position on the graveyard shift. I told them that I was very interested in data processing and in programming in particular, but they told me there was no chance for me to get into the programming portion of the data processing center.

Well, I said to them, "Well, supposing I take this job here and I sort papers faster than anyone has ever sorted them before. Would you consider me for promotion to a GS-3 or something?" They said, "No, there was no chance."

MR. POWELL. They offered you a position on the graveyard shift? What is that? From 4 to 12?

MR. MCCABE. Right. No, 12 to 8.

MR. POWELL. 12 to 8?

MR. MCCABE. 12 to 8. I'm sorry. That's the only position that was open for me. Since I needed employment, I knew that since I had some clerical background somewhere back along the line that I could get a GS-3 position, so I turned down their offer there and left from that point.

But the interesting thing is that when I took this clerical position I happened to come in contact with some of the data processing people, and I noted that there were some GS-7's and GS-9's who had no more background than I had but they were in the data processing branch of the BIA down there, and that had I— Well, let's put it this way. There were no Indians in the data processing branch, and I asked some of the employees how come there weren't. They said, "Well, that's a closed section. There's no Indians permitted into that area into the higher levels except those that would do card-punching or other menial tasks."

MR. POWELL. Did there come a time when you applied for

another kind of position? And would you tell us about that?

MR. MCCABE. Yes. When I got my undergraduate degree I went down and applied for a position. I think it was for the training officer's position down at the Federal Building. And the gentleman who— Well, I took my credentials down there, and I gave him my background.

MR. POWELL. When was this? In 1970?

MR. MCCABE. 1970, yes. I went down there— And I was called down for an interview, and the gentleman there offered me the job at a GS-5. And I happened to know that this position was a GS-12 position.

So I said to him, "Well, I took the Federal entrance examination," and I said, "And I scored a 99 out of a possible 100, which qualified me for a GS-7 at least," and he granted that.

Then I said, "Further, I have passed the intermediate management examination," I said, "and according to my interpretation of the rules that entitled me to a position at GS-9." And he said, "Well, no, if you want to come in you can come in at GS-5." And I said, "Well, that's ridiculous to me."

So after this conversation he said, "Well, we'll hire you at a GS-7 if you're interested." I told him that I wasn't interested at all at that level. I said I would prefer— I would really think that he would— Considering the level of the vacancy I said I would think that he would hire me in at a GS-11, and he said no, he couldn't do that.

So with that we parted company, and, oh, about 2 weeks later he called me up again and told me that the position would be mine at a GS-9 with a possible promotion to a GS-11 within a year.

And after I had had time to think it over I said to him, "Now," I said, "I don't think you're being very fair with me, considering my background, considering my work experience, and my educational background." I said, "I really do think you should hire me in at the GS-12 that the job calls for."

Well, it turned out that we had a little disagreement there so my parting words to him were to the effect that I said, "You mark my word now, I know that if you get someone into this position it's going to be an Anglo," I said, "and he's going to come in at an 11, and I'll guarantee you that within 6 months he will be a 12."

With that I left. And it just so happened that a very short time afterwards I became acquainted with the person who had filled this position, and his background was— He told me that he had come in at a—that he had transferred from another

agency where he was a GS-9, transferred over here at a GS-11, and within 3 months he was a GS-12.

MR. POWELL. Was that person an Anglo?

MR. MCCABE. Yes, he was.

MR. POWELL. Mr. Roberts, as a computer programmer, what are your exact duties?

MR. ROBERTS. Well, I receive my instructions from my supervisor, and they include specific programs because, since I am not assigned a system and most everyone there is and—I don't know why I'm not assigned a system—I am the only full-blood Indian in the project and—

MR. POWELL. How long have you been employed by the BIA, in this position?

MR. ROBERTS. I have been in this position for over 3 years, since July 1—

MR. POWELL. Are you a college graduate, Mr. Roberts?

MR. ROBERTS. Yes, I am. I graduated in business administration from Las Cruces.

MR. POWELL. Do you have any graduate or professional school credits?

MR. ROBERTS. I went to law school for a while, and then as a result of earlier complaint I went to Control Data Institute in Los Angeles and I have approximately 2,000 hours in computer programming.

MR. POWELL. You mentioned an early complaint. You have had occasion to complain against the Bureau of Indian Affairs in connection with your employment?

MR. ROBERTS. Yes, I had. I realized at the time that when I was first hired I didn't know anything about computer programming, so they took me in to bring up the Indian quota that they have at the data center.

MR. POWELL. Let me ask you something about the other workers who are performing tasks similar to yours. I gather that you are the only Indian doing what you do. Is that correct?

MR. ROBERTS. I'm the only Indian in the project. However, there are 9 others—9 of us altogether in a group of 70, 70 programmers. Seventeen of them are white supervision. They are all white. They are above GS-9. They go from 11 to 15.

MR. POWELL. But all the other employees are assigned a permanent job except you? Is that correct?

MR. ROBERTS. Yes, they are. And also at the data center there are eight retired military personnel. One is part Indian. The rest are all white.

MR. POWELL. How many are in your project?

MR. ROBERTS. There are six of us.

MR. POWELL. Are they all Indians?

MR. ROBERTS. Just me. I'm the only full-blood. However, they just brought in a new trainee, and he's part Indian.

MR. POWELL. Do your fellow workers all have more education or experience than you?

MR. ROBERTS. The major problem that I have had is that I'm well qualified. However—

MR. POWELL. You have more education in general and experience than your fellow workers? Is that correct?

MR. ROBERTS. I don't have the experience working in the project. I have only been in the project about a year now. And the problem is that you have got to know two things. You have got to know programming well, and then you have got to know what you're programming.

Well, I know programming as well as you could possibly know it, but I don't know what we're programming. And this is— And I'm not getting any help. I have been left alone.

MR. POWELL. Do you feel that you have been singled out and harassed by virtue of the fact that you filed a complaint?

MR. ROBERTS. Yes, that, because I filed complaints for other people. I have tried to help other people out. And on one occasion I have been harassed at my house. And I have had the police investigate that, and here are pictures of it. As soon as we filed a complaint, the complainant was also harassed at her house, and then shortly after that I was harassed at mine.

MR. POWELL. May we take those pictures for the record, Mr. Chairman?

COMMISSIONER MITCHELL. Yes. So ordered.

[Whereupon, the documents referred to were marked as Exhibit No. 10 and received in evidence.]

MR. POWELL. Mr. Waconda, did you work at another Federal job before the safety division?

MR. WACONDA. Well, yes, I did. I worked in Washington, D.C., with the Bureau of Indian Affairs. My initial start there was back in 1965 with tribal operations and later transferred to the personnel activity, which was 1966; then I transferred here to Albuquerque with the division of safety management.

MR. POWELL. How long were you in your earlier job?

MR. WACONDA. With the personnel office?

MR. POWELL. Yes.

MR. WACONDA. I was in there for approximately—around 9 months. I came in to that particular office because of my service background as administrative personnel specialist, at which time when I was approached by the particular people in

that activity. They had noted to me that because of my service experience as a personnel specialist they indicated they were interested in employing me in their activity. The stipulation regarding this was to come in to their activity with a down-grade demotion.

When I first came into the Bureau they gave me—offered me a job as a GS-4 clerk-typist.

MR. POWELL. What grade were you at the earlier job?

MR. WACONDA. I was a clerk-typist, GS-4, when I came in. This was the only thing that they could make available to me. I had hoped to obtain a better position than that because prior to coming with the Bureau of Indian Affairs, as I stated before, I was a personnel administrative specialist for 2½ years, and then prior to that, working in one of the utility companies here in town, I was a customer relations consultant.

However, they— The only available job they had for me was just a clerk-typist, at which time I was told possibly my past experience would be utilized in another area.

MR. POWELL. What grade level are you now?

MR. WACONDA. I am a GS-9.

MR. POWELL. Do you feel that you have received promotions at an appropriate rate?

MR. WACONDA. On a couple of occasions I haven't. I had to make this known to my superiors, and at one time because of the fact that with my prior personnel experience, working in personnel, I brought this to the attention of my superiors that the position I had originally been hired and promoted to, I was not given the opportunity to work in this position; and, as a result, when the opportunity came around to promote me, I was denied a promotion because I hadn't been working in that particular job I had been promoted and hired to.

MR. POWELL. Have you filed a complaint in connection with your ability to receive promotions at the rate to which you think you're entitled?

MR. WACONDA. Yes, I have, officially. Back on June 6 of this year I filed a complaint in reference to hiring—well, in reference to myself in training, travel, hiring practices, and equal treatment in promotions in my office.

MR. POWELL. Have you been treated any differently since you filed your complaints?

MR. WACONDA. Yes, I have. I have experienced considerable harassment. Just to mention a few, on one occasion my superior came in to my office and closed the door and was bringing about the situation concerning my complaint, and under EEO regulations I have the right to an employee representative at

the time if my superior wanted to talk to me about it.

He denied this. He wouldn't let me have a representative. So I made efforts to leave my office. However, he restrained me. And to continue my efforts to get out of the office, he pushed me on a couple of occasions.

MR. POWELL. Has this harassment affected you in any way?

MR. WACONDA. Yes, it has. As a matter of fact, I have been experiencing considerable harassment since my complaint, and I have had to consult a physician on several occasions, at which time he placed me under—gave me tranquilizers and had advised my particular activity to give me some kind of a sick leave or medical leave until such time that the conditions and situations in my office changed.

MR. POWELL. How many other Indians are employed in the safety division?

MR. WACONDA. Besides myself there's only a secretary. The other members in my office—there's eight of us to be exact—two of them are Indians, and the rest are non-Indians.

MR. POWELL. Does the division have a high turnover rate?

MR. WACONDA. No, they don't. In terms of maybe temporary employment we do have. And the temporary employment only consists of clerk-typist Indian personnel. Our activity is made up of one GS-15, one GS-14, two GS-13's, one GS-12, and one GS-11 are all non-Indians.

MR. POWELL. Are notices of vacant positions posted throughout the work areas of the BIA?

MR. WACONDA. Yes, they are. I am assuming they are at least. I haven't—Sometimes when I don't have the occasion to look at the bulletin board, I assume that most of the announcements are posted and we supposedly do get an interoffice correspondence—not an interoffice—but interoffice information concerning promotional opportunity bulletins.

MR. POWELL. Mr. McCabe, what office was it that you made the application to, the last one that you discussed?

MR. MCCABE. I think it was to personnel down in the Federal Building. I'm not sure.

MR. POWELL. Personnel in the Federal Building here in Albuquerque?

MR. MCCABE. Yes.

MR. POWELL. Bureau of Indian Affairs?

MR. MCCABE. Right. Yes.

MR. POWELL. I have no further questions.

COMMISSIONER MITCHELL. Mr. Buggs?

MR. BUGGS. No questions.

MR. ROBERTS. That's the same office that I am working in.

MR. POWELL. I see.

COMMISSIONER MITCHELL. Mr. Buggs?

MR. BUGGS. No questions.

MS. PAISANO. I would like to make one more statement regarding filing complaints. A lot of the Federal Indian employees hesitate to file complaints simply because they are harassed.

Now, I have witnessed the extent of harassment, where they will as far as actually put a surveillance on the individual as to his activities; and, in fact, one that I have particular knowledge of is they used the law and order personnel to more or less check up on this one individual, and then they also sent someone up to check on the creditors to find out if there was any credit problem on the individual.

Now, the extent of harassment will really go into deep. So this is the reason why a lot of the Indian employees will not make any kind of complaints, simply because they are either harassed as far as their promotional opportunities are concerned or they will find ways to get them out of the positions.

COMMISSIONER MITCHELL. Thank you, Ms. Paisano. I should say that—

MR. ROBERTS. I want to say something about EEO. This is the method that we have to follow a complaint by. That is the only way that they will recognize a complaint. And you have to go through an informal stage and a formal stage, and from the time that I have been involved in it, many of the people didn't know what their program was, and many of the times we would get the copy from personnel. It wasn't posted on the bulletin board like they say it should be.

And we got the copy, we looked it over, we read it and many times they didn't even know what was supposed to be there. They have taken too much time many times.

And then you bring out a lot of this stuff, and you find out that the intimidation or harassment gets worse, and the fact that they can do anything they want to you and you just don't have any rights at all.

COMMISSIONER MITCHELL. I'm assuming that Mr. Buggs and Mr. Powell are listening to this very carefully. One of the things that it is easy for the Civil Rights Commission to do is to go to an agency and examine the grievance process, to validate the assumption that employees should be able to establish grievance communications without being harassed.

As a member of the Commission I have been harassed, so I know that feeling. Not everything thinks it's a good idea for

anyone to serve on the United States Commission on Civil Rights, either.

I want to say about your testimony that, first, I know that it's very difficult testimony for you to give because you know you're here and you know that people know you're here, and since you already have had harassment problems or feel you have had, it's a particular problem for you. I just want to assure you if you are harassed because of your appearance here those who harass you have committed a Federal violation, and the Commission will take aggressive action, and that step is no longer a matter for the BIA. It is a matter for the United States Commission on Civil Rights and possibly for the Justice Department.

Second of all, I should say that the Commission in listening to this kind of evidence must always, in my opinion, take into account the complexity of life. Sometimes budgets get cut. You can't get promoted anyhow, even if you're very good and nobody discriminates against you. On the other hand, those are great excuses for selecting people from nonminority areas. And we are very sensitive to that.

Finally, I just want to express a deep personal disappointment at what I hear. The BIA should be the showcase in this country and in the Federal Government for the skills and administrative and technical abilities of the Indians. And in all the years of its existence it has clearly failed, by the numbers alone, to do that. That's deplorable. And perhaps out of this hearing will come some process by which we can intensify that. I believe in my lifetime the BIA or something like it is going to be necessary and useful to the Indian community, and it makes good sense, therefore, that its employees symbolize the best of the Indian cultures.

Thank you for coming.

MR. WACONDA. Mr. Commissioner, could I just add one thing here? I think that it's important for the Commission to know the attitude that the Bureau of Indian Affairs has taken concerning discrimination complaints placed by Indian employees.

There is a non-Indian employee organization with the Southwestern Indian Polytechnic Institute known as DART. Now, I had placed my complaint several months to the Bureau concerning discrimination, and DART, the organization, placed their complaint of discrimination concerning Indian preference about 2 or 3 months after I did.

The Bureau of Indian Affairs and their EEO program back in Washington instructed me and said that I had to follow

administrative procedures if they were going to recognize my complaint, and they told me the number of days involved to resolve my situation.

Yet this non-Indian group, DART, was able to have a U.S. court hearing concerning this Indian preference program. They were able to express and give all their grievances concerning this. And yet I was still sitting being advised by the Bureau of Indian Affairs—still being told to follow administrative procedures.

COMMISSIONER MITCHELL. Thank you. Mr. Powell, isn't that something that is subject to easy investigation by Commission's staff?

MR. POWELL. We will certainly look into it, Mr. Commissioner.

COMMISSIONER MITCHELL. We would like very much to do that. And that is the advantage of this kind of a record.

MR. ROBERTS. Why do you have to go at it this way? Why do you have to—

COMMISSIONER MITCHELL. Well, our problem is that we often are one step before the undertaker. Why do you have to wait this long to deal with this whole problem? But our task is to examine the way the civil rights laws are applied to the citizens of this country. That's what we are doing at this hearing right now. And I'm going to call the next panel. Thank you.

May we now have the Federal employment panel. You are employers. Charles Romero, of the United States Civil Service Commission. Walter Olson and Mannie Foster of the Albuquerque area office of the Bureau of Indian Affairs. And Maurice Johnson of the U. S. Postal Service. Will you gentlemen come forward, please?

Will you identify yourselves so I know whom I'm swearing in, gentlemen?

MR. JOHNSON. I'm Maurice Johnson, District Manager, U. S. Postal Service, Albuquerque District.

MR. OLSON. I'm Walter Olson, Area Director for the Bureau of Indian Affairs for the Albuquerque area, and I would like to make one thing clear immediately.

COMMISSIONER MITCHELL. You sound like a Republican.

[Laughter.]

MR. OLSON. Well, that's a good thing to be right now, Mr. Commissioner.

[Laughter.]

The only employee of the four that were up here that works for the Albuquerque area was Ms. Paisano.

COMMISSIONER MITCHELL. And you are?

MR. ROMERO. I'm Charles Romero with the Civil Service Commission. I'm the Area Manager.

COMMISSIONER MITCHELL. And you're Mannie—

MR. FOSTER. Mannie Foster, Acting Area Personnel Officer, Albuquerque Area, Bureau of Indian Affairs.

COMMISSIONER MITCHELL. Thank you.

[Whereupon, Messrs. Charles Romero, Walter Olson, Mannie Foster, and Maurice Johnson were sworn by Commissioner Mitchell and testified as follows:]

TESTIMONY OF MR. CHARLES ROMERO, AREA MANAGER, CIVIL SERVICE COMMISSION; MR. MAURICE JOHNSON, ALBUQUERQUE DISTRICT MANAGER, U. S. POSTAL SERVICE; MR. WALTER OLSON, ALBUQUERQUE AREA DIRECTOR, AND MR. MANNIE FOSTER, ACTING ALBUQUERQUE AREA PERSONNEL OFFICER, BUREAU OF INDIAN AFFAIRS

COMMISSIONER MITCHELL. Mr. Powell.

MR. POWELL. Let me recapitulate. I think we have all the names and positions for the record, do we not?

Mr. Romero, would you please briefly explain your specific duties as area manager?

MR. ROMERO. Yes, as area manager of the Civil Service Commission I have several responsibilities. First, and that takes most of my time, is to run the examining program for the Civil Service Commission. This takes approximately 90 percent of my resources. In addition, I have responsibilities in monitoring agencies and conducting personnel management reviews of agencies' personnel programs. Those are my major responsibilities.

MR. POWELL. How long have you worked as area manager with the Civil Service Commission?

MR. ROMERO. I have been in Albuquerque about 6 years. Prior to becoming area manager I was the executive officer of the Interagency Board of Examiners.

MR. POWELL. Mr. Romero, how many persons take civil service examinations in your area each year? Approximately?

MR. ROMERO. I'd say somewhere around 20,000.

MR. POWELL. Of this number, how many are Indians?

MR. ROMERO. I'm sorry. I don't have that information.

MR. POWELL. Would you give me some kind of estimate?

MR. ROMERO. It's impossible to give it to you because there is no way for us to ascertain that information because it's not on the application.

MR. POWELL. Mr. Romero, do Indians have any special testing problems?

MR. ROMERO. No, not that I am really aware of.

MR. POWELL. Don't they have language problems?

MR. ROMERO. They might, but I'm not specifically aware of any. Since I don't construct the written tests and, while we do grade them, we don't know who the Indians are. And we never have gone into looking to see whether the Indians specifically have had problems passing our written tests.

MR. POWELL. You mean to say that in an area such as this where there are a significant number of Indian citizens, and in view of the fact that there is an affirmative action program within the Federal Government, you're not concerned or aware of problems—

MR. ROMERO. Oh, yes, we are very concerned, and we are aware that there are some problems.

MR. POWELL. What about this question? Do Indians have special testing problems? Don't you have to know the answer to that question if you're going to deal with the problems?

MR. ROMERO. Yes, we should know the answer, but I don't specifically know the answer.

MR. POWELL. Isn't it part of your job to know the answer to that kind of question? Isn't it part of your job to know the answer to the question of whether Indians have special testing problems?

MR. ROMERO. Now that you put the question, yes, I should know, yes.

MR. POWELL. What is the Indian pass rate ratio as compared to the non-Indian pass rate ratio?

MR. ROMERO. I'm sorry, sir. I can't tell you because I don't know who the Indians are.

MR. POWELL. Is there any way that you can give us that kind of information?

MR. ROMERO. No, sir, unless we ask all the applicants who apply with us to indicate their minority designations, and we don't do that.

MR. POWELL. Mr. Romero, have you identified any specific problems which inhibit Indians from taking civil service examinations?

MR. ROMERO. Specific problems? What do you have in mind, sir?

MR. POWELL. Well, the image of the Federal Government as a potential employer?

MR. ROMERO. No, sir, I haven't identified any specific problems of that nature.

MR. POWELL. Mr. Romero, do you have responsibilities in relation to equal employment opportunity performance of Federal agencies in this area?

MR. ROMERO Yes, I do.

MR. POWELL. Would you tell us about them and how you carry them out?

MR. ROMERO. All right. In the review of personnel management evaluations of Federal agencies we do look at their affirmative action programs and how they are specifically conducting themselves in the affirmative action area.

MR. POWELL. As part of that look, does it involve a look at the employment patterns?

MR. ROMERO. Yes, sir.

MR. POWELL. Well, could you give me— Did you hear the testimony earlier here regarding the employment patterns in the Federal Government in this area?

MR. ROMERO. Yes, sir, I did.

MR. POWELL. I take it on the basis of such reviews you have your own personal, at least official, knowledge of what the employment patterns are?

MR. ROMERO. Yes, I do.

MR. POWELL. Would you care to comment as to what you think the extent of employment of Indian—

MR. ROMERO. Yes, I think, in fact, I know, that we have a long way to go and that there needs to be a lot more affirmative action on the part of Federal agencies to increase the—

MR. POWELL. If you're going to get from point A to point B and you have said it's a long way to go, you have to begin by taking step after step? Is that correct?

MR. ROMERO. Yes.

MR. POWELL. What are you doing? What steps are you taking?

MR. ROMERO. We are at the current time asking Federal agencies to prepare affirmative plans of action which will be reviewed and approved by our Dallas regional office.

MR. POWELL. Are specific provisions in these affirmative action plans— Are there going to be specific provisions aimed at improving the employment picture for Indians?

MR. ROMERO. Yes, for all minorities.

MR. POWELL. Well, are they going to take specific steps aimed specifically at Indians? Indians are not all minorities. Indians are a particular minority who have particular problems. Are these particular problems going to be addressed in a particular way in these affirmative action plans?

MR. ROMERO. Yes, I'm sure—while I can't swear to it—I'm sure that—

MR. POWELL. Don't you feel that they should?

MR. ROMERO. —that our review will include a review of how

the Indian is faring in each Federal agency.

MR. POWELL. Do you feel that such particular direction should be made toward this?

MR. ROMERO. That is correct.

MR. POWELL. Do you have any input into the development of these plans?

MR. ROMERO. Yes, when asked, I do.

MR. POWELL. You mean you have to be asked? You can't volunteer? Isn't that part of your responsibility to volunteer?

MR. ROMERO. Oh, yes, I volunteer. In fact, we just conducted a training session on upward mobility so that Federal agencies will know a little more about how to go about upward mobility programs.

MR. POWELL. Have you made any recommendations in this regard concerning improvement of the employment picture for Indians?

MR. ROMERO. Yes, I have.

MR. POWELL. Would you care to comment on what those recommendations have been?

MR. ROMERO. Yes. I have always said that the Indian is the forgotten American and that here in New Mexico that we have really another minority that has kind of been ignored by our fathers in Washington.

COMMISSIONER MITCHELL. Mr. Powell, would you ask Mr. Romero whether he has ever hired any Indians in his own office?

MR. POWELL. Mr. Romero, have you ever hired any Indians?

MR. ROMERO. Yes, I have. I have had four Indians during the past summers. They were all summer employees.

MR. POWELL. Oh, these are part-time employees?

MR. ROMERO. Yes, they were.

MR. POWELL. How many full-time employees do you have in your own office?

MR. ROMERO. I have 14.

MR. POWELL. Of that number, you have no Indians?

MR. ROMERO. No Indians.

MR. POWELL. I see. What is your employment picture otherwise? Do you have any Mexican Americans?

MR. ROMERO. Yes, I have 9 of 14.

MR. POWELL. Nine of the 14 are Mexican Americans?

MR. ROMERO. Nine of 14, yes, sir.

MR. POWELL. Do you have any black employees?

MR. ROMERO. No, I do not.

MR. POWELL. You mentioned your review in connection with your responsibilities in relation to the equal opportunity em-

ployment performance of Federal agencies—review of the agency plans. Do you also provide technical assistance to them?

MR. ROMERO. Yes.

MR. POWELL. Are you providing any technical assistance in connection with the employment of Indians?

MR. ROMERO. Yes, I am.

MR. POWELL. Well, to whom? To which agencies?

MR. ROMERO. Well, currently to the Atomic Energy Commission. I am participating in internal review at this moment. In fact, I am there this week.

MR. POWELL. Do you also handle complaints?

MR. ROMERO. No, not directly. The complaint bypasses me. It goes to our Dallas office.

MR. POWELL. Okay. Thank you.

MR. BUGGS. Mr. Powell—

MR. POWELL. Yes?

MR. BUGGS. Mr. Romero, you do know of the 1964 Civil Rights Act which establishes preference for the hiring of Indians by public agencies, do you not?

MR. ROMERO. I am aware of the Indian preference laws, but not of the specific preference you have indicated here.

MR. BUGGS. Well, there is such a law. You say you don't know who Indians are. I'm informed that a good case can be made for the legality of an act on your part or on the part of other departments of the Federal Government to put a sign—As you know, signs are put up in all Government offices and the law requires that private employers also post a sign which says that there is such a thing as an equal opportunity law and that persons may not be discriminated against on the basis of race.

MR. ROMERO. Yes, sir, and I do have such a sign in my office.

MR. BUGGS. All right. I'm suggesting another kind of sign. Under the Indian preference law could you not, if you really wanted to find out who Indians were, put up a sign saying that there is such a thing as an Indian preference law and anyone who wanted to take advantage of that should so identify himself?

MR. ROMERO. We do in examinations which are geared primarily for BIA include a statement in the application blank which allows an individual who is an Indian to claim Indian preference if he so desires. In our nationwide Indian education program, for example, there is such a provision so that an Indian who wants to claim the preference can do so.

MR. POWELL. Let's clarify the record. The preference law

relates to employment by the Bureau of Indian Affairs and the Indian Health Service. Is that correct?

MR. ROMERO. That is correct.

MR. POWELL. It does not relate to the other Government agencies.

MR. ROMERO. No, sir.

MR. POWELL. That's correct. Okay.

MR. ROMERO. So when we announce a program or examination which covers primarily BIA, we do do this. We do ask those applicants to identify themselves as having one-quarter or more Indian blood.

MR. BUGGS. Do any of them do that?

MR. ROMERO. Yes, sir. Quite a number. Many claim Indian preference even though they are not entitled to it. Some people, for example, who are spouses of Indians feel that because they are married to an Indian that they are entitled to the preference. We go back to everyone who claims this preference, and we get a statement from the enrolling agency that this person is indeed on the rolls, and then we allow the preference. We don't allow it directly because we cannot make appointments under the preference, but the BIA could. We identify all these Indians so the Indians can be appointed directly.

MR. BUGGS. Then there is a way that you could identify at least some Indians?

MR. ROMERO. We do. We don't do this for every examination because some examinations cover many agencies.

MR. BUGGS. Do you have special examination forms for potential BIA employees?

MR. ROMERO. For this particular announcement, which covers all the Indian educators, it's geared specifically for the BIA; so, therefore, we have included this particular question in there.

MR. POWELL. Mr. Johnson, what geographic area is covered by the Postal Service Albuquerque District?

MR. JOHNSON. The entire State of New Mexico, southwestern Colorado which comprises the Durango sectional center, and the part of northeastern Arizona out of the Gallup sectional center.

MR. POWELL. Could you tell us how many Indians are employed in the district?

MR. JOHNSON. Thirty.

MR. POWELL. Thirty in the entire district?

MR. JOHNSON. That's correct.

MR. POWELL. How many employees are there in the— Total

employees? What's the total employment picture?

MR. JOHNSON. At the end of accounting period four, which was ended October 13, we had 2,662.

MR. POWELL. 2,662, only 30 of whom were Indian?

MR. JOHNSON. That's correct.

MR. POWELL. You don't have a way of breaking down the number of employees employed in New Mexico within the district, do you?

MR. JOHNSON. Yes, I do. The Indian employees, in New Mexico we have 19, and I can break that down by craft if you like.

MR. POWELL. In New Mexico you have 19? How many total employees in New Mexico?

MR. JOHNSON. I don't have that figure with me, but I'll be happy to get it for you.

COMMISSIONER MITCHELL. Mr. Powell, may I just ask a question that is relevant to this line you are pursuing? How do you know you have any Indian employees? Mr. Romero doesn't know.

MR. JOHNSON. We have an equal employment opportunity report that is mandatory in the Postal Service.

COMMISSIONER MITCHELL. What do you do? Do you say to somebody, "Are you Indian?" or, "Put down if you're Indian," or do you make a note of your Indians when you hire them?

MR. JOHNSON. No, we ask each postmaster when he hires someone to indicate the changes that have been made during the past year.

MR. POWELL. Okay. Just so we can talk in ball park terms, you have 19 Indians in New Mexico, and in ball park terms, given the size of your district, roughly how many total employees are there in New Mexico?

MR. JOHNSON. Roughly?

MR. POWELL. Yes.

MR. JOHNSON. I would say approximately 2,600.

MR. POWELL. 2,600, New Mexico?

MR. JOHNSON. Yes.

MR. POWELL. How many of those employees would be in Albuquerque itself?

MR. JOHNSON. In Albuquerque, approximately 1,000.

MR. POWELL. How many Indians in Albuquerque employed in your district?

MR. JOHNSON. I don't have that breakdown, sir. I'll be happy to get it.

MR. POWELL. It seems to me my staff has an indication here

that there's around 970 employees in Albuquerque. Would that sound correct?

MR. JOHNSON. 170?

MR. POWELL. No, 1,000 is what you say. That's right. And my staff indicates that you have about 8 Indians in Albuquerque. Does that sound right to you?

MR. JOHNSON. Well, they got the information from us, so I'm sure it's right.

MR. POWELL. They did get it from you? All right.

Mr. Johnson, how many postal facilities are there on pueblos and reservations within the Albuquerque district?

MR. JOHNSON. I'll dig if you will bear with me. If I recall, the number is 37.

MR. POWELL. I'm sorry?

MR. JOHNSON. If I recall, the number is approximately 37.

MR. POWELL. That's what we have, so we got it from you. Okay. It sounds right.

[Laughter.]

MR. JOHNSON. I'm glad we're looking at the same script.

[Laughter.]

MR. POWELL. Let's go back. In Gallup, your information which we have indicates that there are 31 employees in Gallup, none of whom are Indian.

MR. JOHNSON. That's correct.

MR. POWELL. And that there are 53 employees in Farmington, none of whom are Indian.

MR. JOHNSON. That's not correct. Farmington does have one Indian.

MR. POWELL. Well, 53 and 1 Indian.

MR. JOHNSON. Okay.

MR. POWELL. Okay. And in Santa Fe there are 134 employees and only 1 Indian. Is that right?

MR. JOHNSON. That's correct.

MR. POWELL. These are all areas, we know, of high Indian concentration from the standpoint of residence. Isn't that correct?

MR. JOHNSON. That's right.

MR. POWELL. And on the Navajo Reservation you have 35 employees, 10 of whom are Indian. Navajos seem to do somewhat better?

MR. JOHNSON. It looks that way.

MR. POWELL. That information is correct?

MR. JOHNSON. You got it from us like I said. I'm sure it is.

MR. POWELL. Getting back, there are 37 postal facilities on

pueblos and reservations within the Albuquerque district? Right?

MR. JOHNSON. Right.

MR. POWELL. Now, of that 37 on reservations, how many Indian postmasters do you have?

MR. JOHNSON. Do you want to limit this to New Mexico?

MR. POWELL. Well, now, when we talk of 37, is that the entire district?

MR. JOHNSON. Yes, it is.

MR. POWELL. Well, no, let's talk about—

MR. JOHNSON. Okay. The entire district we have eight postmasters.

MR. POWELL. Eight postmasters?

MR. JOHNSON. That's correct, eight Indian postmasters.

MR. POWELL. Out of 37 postmasters?

MR. JOHNSON. Yes.

MR. POWELL. Well, the next question is, I think, sort of self-evident. How many and what percent of employees at these facilities are Indians? I guess it's very, very small in view of your numbers.

MR. JOHNSON. Yes, it is.

MR. POWELL. Less than 1 percent? Is that right?

MR. JOHNSON. Yes.

MR. POWELL. Less than 0.05 percent, I guess. Why are there so few Indian employees, Mr. Johnson?

MR. JOHNSON. Well, I think that we had better go back to the background of our district office. The district was not formed until September 8 in 1971. Prior to that time—

MR. POWELL. But the service existed as of—

MR. JOHNSON. The Post Office Department did. However, the district office had no jurisdiction in this particular area.

Now, since the time where we have had any jurisdiction, we have been in a cost reduction situation, as you may have read about in the paper. From approximately the first of the year until the current period we have lost 160 employees. We have not been hiring. Albuquerque, as an example, as a major employer in this area, has not had a new hire since November 4 of 1971.

MR. POWELL. I see.

MR. JOHNSON. So as far as our jurisdiction is concerned, this explains part of it.

MR. POWELL. Mr. Olson, would you explain, please, your duty as area manager of the Bureau of Indian Affairs?

MR. OLSON. The area services 24 different tribes that get local services from agencies, eight that we call reservation

agencies, and two Indian schools. And the area office provides an overall supervision, some housekeeping services, and functions like the planning for road work.

MR. POWELL. Mr. Foster, what is the total number of employees at the BIA area office?

Mr. Foster, we have these figures [indicating chart]. Are those figures correct?

MR. FOSTER. Yes, these are figures that were furnished you ending at the end of the quarter, September of this year.

MR. POWELL. Okay.

Mr. Olson, what accounts for the fact that so few Indians, comparatively, are at higher GS levels?

MR. OLSON. I think this is quite explainable. One is that, particularly in the Southwest, the educational opportunity has been very, very lacking until these last few years. In the 1950's was the first time, really, a lot of these Southwest tribes had an opportunity to even get grade school and high school education. So in this age group then it's only— Then going to the college level, it's only been about 5 years that there has been any real special emphasis given to getting Indian youngsters in college and being able to give them some financial help.

MR. POWELL. Turning now to the testimony we had heard earlier, you mentioned when you sat down that only one of those employees was an employee for which you had some responsibility. Is that correct?

MR. OLSON. That's correct.

MR. POWELL. Now, Mr. McCabe. I take it he's not an employee, but wasn't his application for a position with one of the offices for which you have responsibility?

MR. OLSON. No, not to my knowledge, not of the ones he mentioned.

MR. POWELL. How can you say that? How can you be sure of that?

MR. OLSON. In Albuquerque there are seven or eight offices that are actually Washington offices that were moved out here because there was better room I guess, and I think, also, so that more Indians could be employed. I think this was the intent. And those offices do not report to me.

MR. POWELL. I see. Mr. Olson, what is being done to meet the employment deficiencies of Indians at higher levels? What are you doing? What kinds of steps are you taking?

MR. OLSON. Well, let me start out by saying, not enough. And I think there are several things. One of the constraints is that there seem to be very few Indian youngsters who go into the more technical areas. Most of them go to education.

There's a few now getting into forestry, into land operations. And we really have in these areas very few Indian youngsters or Indians of any age that are in those technical areas.

MR. POWELL. Well, tell me. Isn't it true that BIA has had charge of Indian education for many, many years?

MR. OLSON. That's right, but you can't educate without money, and I might say in terms—

MR. POWELL. Don't you have any input in seeing to it that the educational needs of Indian youngsters are being met so that they can get jobs not only at the BIA but in the private sector?

MR. OLSON. Yes, we do.

MR. POWELL. Well, then, you can't— How can you excuse your failure to promote by virtue of educational opportunities when it's your responsibility to see that those educational opportunities are met?

MR. OLSON. No, I didn't say quite all of that.

MR. POWELL. Well, that's what I think your answers are beginning to imply.

MR. OLSON. No, no, no, no. Not entirely. We do restructure jobs to give Indians the opportunity to work into these higher jobs. I think there's another constraint now we have in the top-level business. We have white Anglos mostly there, some Spanish Americans, and we need an out-placement service or—

MR. POWELL. You need a what?

MR. OLSON. An out-placement service so that we can move those people out and let the Indians come in.

MR. POWELL. What about the educational problem? Do you feel that the BIA-run schools are adequately meeting the educational needs of Indian children?

MR. OLSON. No, I don't. I think we need many more specialists in, for instance, language because there is a great language need among all these Southwest tribes that we are talking about.

MR. POWELL. And you need more money?

MR. OLSON. We need more money. I'll give you an example in terms of getting youngsters into college. We do not go out and recruit those youngsters. We do not, you know, push to see more of them get in. We take those that come with their applications, and we have been able to service those—not too adequately, but we have been able to service them. But we are not pushing. We are not really pushing.

MR. POWELL. Turning now to another question which has been of some controversy in recent months, would you please explain how the Indian preference interacts with the normal

civil service system? Mr. Romero, would you explain that for us?

MR. ROMERO. The interaction of the Indian preference versus the regular civil service?

MR. POWELL. I think in doing that you ought to tell us what the Indian preference is and how it—

MR. ROMERO. All right. Indian preference. There are many laws going back to 1834 which established Indian preference. But before we go into this I'd better set myself up. I'm not an expert on Indian preference, but I can chat about it.

The laws established a preference for Indians which relates to those agencies which have primary responsibility for the Indian programs, in this case the Indian Health Service and the BIA. These two agencies can make appointments which are excepted outside the competitive civil service, and they make them directly to Indians.

The one-fourth Indian blood criteria was established in an Executive order issued by President Roosevelt when he was in office, so that's where we get this one-fourth Indian blood.

COMMISSIONER MITCHELL. Which President Roosevelt?

MR. ROMERO. It was F.D.R.

COMMISSIONER MITCHELL. Thank you.

MR. ROMERO. I'm not sure of the date. I think it was 1938 or 1939.

These employees when they are given these kinds of employment go into the excepted service, which means they do not go into the competitive service because they do not compete with the public. When they go on, they get essentially the same benefits as all other employees of the Federal service except a couple of the major ones. They do not have the right to transfer. They do not build up a right to be reinstated, which means that they are essentially locked into the agencies that appoint them, either the BIA or the Indian Health Service.

MR. POWELL. They do not have the right to transfer? I think I understand that.

MR. ROMERO. They cannot transfer because they have not competed competitively.

MR. POWELL. What about reinstatement? What does that mean?

MR. ROMERO. This means a competitive employee who leaves his position for any reason, he resigns for— For example, he can be reinstated if his competitive appointment was a competitive one.

If an Indian leaves the BIA, for example, on an excepted appointment, the only agency they can put him back on would be

an agency like the Indian Health Service or the BIA.

MR. POWELL. I see. Non-Indians who are employed by the BIA, they're part of the competitive service?

MR. ROMERO. They take competitive examinations and compete with the public. The Indians do not. That's why they do not enter the competitive service.

MR. POWELL. How does it function that an Indian is hired— If Indians are not taking an exam for the same position, on what basis is it that an Indian is hired or a non-Indian is hired?

MR. ROMERO. The BIA makes this determination when they are recruiting. If an Indian is available, the BIA will appoint an Indian to an excepted appointment.

MR. POWELL. Would you care to comment on this, Mr. Olson? I'm told you know a considerable amount about it.

MR. OLSON. Well, frankly, I know some.

One, before I answer that particular question, the Indian preference by a determination of the Secretary of Interior now applies to all of the bureaus within the department to this extent: That anyone—

MR. POWELL. May I suggest that at one time it didn't apply to all the bureaus? Is that correct?

MR. OLSON. That's right. And it has only been recently that this determination has been made.

To this extent though: It's limited. The determination is that they will receive preference for those kinds of programs that are working for Indians, so in a sense it's pretty limited.

MR. POWELL. Well, tell us how that preference works. Was what Mr. Romero said correct? Does it need to be enhanced in some way?

I'm still not clear how an Indian is hired as opposed to a non-Indian when they have both applied for the same job.

MR. OLSON. In initial employment the Indian gets preference.

MR. POWELL. Specifically, what does that mean? Does he take an examination to determine his qualifications?

MR. OLSON. Yes.

MR. POWELL. Does a non-Indian take an examination to determine his qualifications?

MR. OLSON. Yes.

MR. POWELL. And how does that work? You have, you know, a number of people applying for a limited number of jobs. There's one job available. Six people who have taken the exams, two of which are Indian, four of which are non-Indians. How do you determine what person gets the position?

MR. OLSON. Well, it's the Indian. But could I let Mr. Foster give you the detail on that?

MR. POWELL. Yes.

MR. FOSTER. The exam on that— If we have a competitive examination, an Indian applicant takes a competitive examination, passes it, is qualified, if we go to the Civil Service Commission and ask for a register, they will say we take from the top three. But the Indian applicant down here may be a 72-point-grade candidate, and if we wish to appoint that Indian, he's qualified, so we can give him an excepted appointment where he wouldn't be eligible for selection under the competitive system.

MR. POWELL. You can hire him even though there are non-Indians above him on the list? Is that right?

MR. FOSTER. That's right.

MR. POWELL. But you say "if you wish." You're not required to hire him?

MR. FOSTER. Indian policy on the preference law does command that we do select the Indian if he is qualified.

MR. POWELL. So that if there is a qualified Indian, then, you would hire him? You don't have an option?

MR. FOSTER. Then we'd have to give him the excepted appointment.

MR. POWELL. Is that followed in every case? Is that generally followed I should say?

MR. FOSTER. Ninety-nine percent of the time, yes.

MR. POWELL. The testimony we have heard earlier suggested it's not. Would you care to comment?

MR. FOSTER. I beg your pardon?

MR. POWELL. The testimony we heard earlier suggests it's not. Would you care to comment? Mr. McCabe's testimony would suggest that that's not followed. It would suggest even that Indians are discouraged even when they are qualified and that Anglos are favored.

MR. FOSTER. Well—

MR. POWELL. Could it be that he was applying for a job for which preference didn't relate? Is that it?

MR. OLSON. Pardon me for interrupting, but I really don't think this is one that Mr. Foster ought to deal with—comment on that case.

MR. POWELL. Why not?

MR. OLSON. Because I don't think the whole story is there.

MR. FOSTER. The circumstances we are talking about, too, are under another jurisdiction. I don't know what the circumstances were.

MR. POWELL. I'm just asking. I'm really inquiring about the preference and how it operates. You suggested that once an Indian is qualified and there is a job available that he would be hired.

MR. FOSTER. Right.

MR. POWELL. Is that correct?

I see. The preference now applies to promotions? Is that correct?

MR. FOSTER. Promotions and training.

MR. POWELL. There is a separate Indian service within the BIA and also at the same time a normal civil service within the BIA?

MR. OLSON. [Nodding affirmatively.]

MR. POWELL. You feel, Mr. Romero, I take it, that there are substantial disadvantages to that for Indians?

MR. ROMERO. Yes, there are, especially if the Indian is mobile and wants to avail himself or herself to a career in some other Federal agency.

MR. OLSON. May I comment?

MR. POWELL. Yes, please.

MR. OLSON. In terms of the Indian people that are employed in the area office, which is about— It's three-fourths of the total employment. Of that three-fourths, half of those have taken the exams, the regular civil service exams, so they have the same mobility as everybody else.

MR. POWELL. I see.

MR. OLSON. And we do encourage this.

MR. POWELL. So an Indian then who takes the regular exam or takes the excepted exam and then the regular exam, he has the mobility and reinstatement privileges?

MR. OLSON. That's right. And the interim period, you know, gives them a chance for additional training and experience.

MR. POWELL. Are you taking any steps to encourage Indians to qualify themselves for broader employment opportunities within the Federal Government?

MR. OLSON. Yes.

MR. POWELL. Mr. Romero, what about it?

MR. ROMERO. Yes, we are. We have two projects, one with the Albuquerque area office headed by Walter Olson, the other with the field administrative office where we are trying to convert all the Indians that want to be converted to the competitive service.

What we have done, we have identified all the Indians who are excepted, and then we have made available to these people— This is an ongoing project. If they want to compete, we will then schedule them whenever the exam is open.

For example, if a young lady is working as a typist and she has passed the test that was administered by the BIA and she has an excepted appointment, she is advised when the examination is open so that she can compete competitively. Now, if she falls within reach—that is, if the agency can select her—then she is given a competitive appointment, and then she does have the right to transfer.

MR. POWELL. One last question. There have been some recent instances where tribes have taken over BIA functions under contract and Federal employees lose their jobs. If a position becomes available somewhere else in BIA, what are the rights of former non-Indian employees as against a qualified Indian applicant who is entitled to get preference by virtue of his qualifications and who has not been formerly employed? Do you get the gist of the question?

MR. OLSON. Is that question for me?

MR. POWELL. Yes.

MR. OLSON. Dulce is our most active example. They have been under this takeover for 2 years. And the Secretary made a commitment that the displaced people would be taken care of.

MR. POWELL. Do non-Indian displaces have preference over—

MR. OLSON. He just said displaced people, and he took Indians and non-Indians. And to answer the question specifically, I think, yes, in this case.

MR. POWELL. Of course, such non-Indian employees can move anywhere within the Government. Indians can only be employed by the BIA and Indian Health Service. Isn't that correct?

MR. OLSON. If they have just excepted appointments.

MR. POWELL. That's right. Is there an opinion from the Solicitor of Interior backing that view up?

MR. OLSON. Not to my knowledge. Do you know, Mannie?

MR. POWELL. I have no further questions.

COMMISSIONER MITCHELL. Mr. Buggs?

MR. BUGGS. An Indian doesn't lose his preferential treatment in BIA if he becomes a career civil servant, does he?

MR. OLSON. Certainly not.

MR. BUGGS. He can still exercise that preference?

MR. OLSON. Yes. You bet.

COMMISSIONER MITCHELL. Mr. Johnson, somewhere in the papers preliminary to this hearing I read that Indians have complained that some postmasters withhold checks at the post office level and either charge Indians fees for having them delivered or otherwise harass them before they let them have their Federal checks. Are you familiar with this at all?

MR. JOHNSON. I read the allegations in probably the same article, yes.

COMMISSIONER MITCHELL. I think it was the Federal Trade Commission— No, whatever the source was, have you any comment or do you have any information?

MR. JOHNSON. I checked today to find out. First of all, we do have an enforcement bureau or an investigative bureau in the Postal Inspection Service. They do enforce our postal regulations and also investigate any allegations where there is a Federal offense, and withholding mail is a Federal offense.

My investigation turned out that they had checked on many of these allegations and found that in fact what had happened, our customer had worked with a trader who happened to also be the postmaster and worked out a deal with the trader that he would act as his agent and that he would withhold his check in order to get credit.

COMMISSIONER MITCHELL. Can you do that with a Federal check?

MR. JOHNSON. Yes, you can.

COMMISSIONER MITCHELL. And assign it to—

MR. JOHNSON. As I understand it. I'll have to admit I'm not an attorney. But as I understand it, when a customer designates a person as his agent we can deliver the mail to that agent.

COMMISSIONER MITCHELL. I guess what I'm asking is a question you really can't answer, which is what is the law with respect to Federal remittance in the form of a pension or other payment? Can a postmaster say, "I'll be your agent. I'll take your check. I'll endorse it. I'll cash it, and I'll give you what is left"? Or is there some process that has to be a lot more formal than that? I guess what I really am asking is: Is it a practice in which a post office of any kind should engage?

MR. JOHNSON. Personally, I don't think so, but as far as the legality of the issue; it's a written agreement, as I understand it, and this is where the Inspection Service has not been able to prosecute—is the fact they have had a written agreement.

COMMISSIONER MITCHELL. Mr. Olson, you know that you are still under subpoena for tomorrow when we are going to talk further about employment and specifically about water rights?

MR. OLSON. Yes.

COMMISSIONER MITCHELL. And, Mr. Romero, do I understand that, again from background papers, that you have some difficulty getting information about tests and other civil service jobs at the tribal level down to the tribal level?

MR. ROMERO. Yes, we do. We have much difficulty in getting

our information to the Indians. We mail it out. We cannot use paid advertising unless it's a shortage category job. We mail out information to the tribal leaders, to the minority leaders, but the information just doesn't get down.

Can I make a point on this business about my not knowing? It's not that I would not like to know, but I just don't know who is applying for our exams. And not many of our exams have written tests, which means that most of the applications we receive are received by mail, so there's no way for us to know the ethnic background of the individual who is submitting the application.

It would be nice if I did know. That way I could say our affirmative program—that we're reaching more Indians, we know that we're getting more Indians, for example, on our lists of eligibles. Since we can't ask and since it does not appear on the application, I really don't know.

For example, if we go out to the university, say Highlands University, and we recruit for Mexican Americans, it's pretty easy for us to spot the Mexican American names, and we know that our recruiting visit was pretty successful. But when you recruit for Indians you don't always know whether you are reaching the Indians or whether you are reaching Mexican Americans or just who you are really reaching. So it is a real problem. I'd like to know but I just don't know how many Indians I might have in any particular list of eligibles.

COMMISSIONER MITCHELL. Mr. Buggs?

MR. BUGGS. Mr. Romero, I understood that the great majority of Pueblo Indians lives on reservations, the 19 reservations in this area. If you got an application from any one of those or anywhere close to it, wouldn't you make a reasonable assumption that that would be an Indian?

MR. ROMERO. You could. For example, you could say that a person who had a certain address in Albuquerque is probably black. You could make these assumptions. But they are assumptions, and you really never know for sure.

MR. BUGGS. Couldn't you act on that assumption and be 90 percent correct?

MR. ROMERO. Probably. You'd be batting pretty good. But you still would never know for sure. Take, for example, a typist exam. You would never know, especially if a young lady happened to be living here, you know, whether she was an Indian or not.

MR. BUGGS. Mr. Johnson, you are saying that the Postal Service is cutting back on employment? Is that right?

MR. JOHNSON. Definitely.

MR. BUGGS. And that you have had no turnover in X number of months?

MR. JOHNSON. That's correct.

MR. BUGGS. Do you expect that there will be any turnover in the next 5 years?

MR. JOHNSON. Definitely.

MR. BUGGS. Do you have any program looking forward to the employment of more Indians? Are you developing an affirmative action program involving goals and timetables?

MR. JOHNSON. Our EEO plan of action which we submit to the regional postmaster general, I'll be quite honest with you, as far as the employment of Indians, does not have a timetable. However, we do have a plan of action specifically to make the first step. As to any vacancies that we have on the reservations, any post offices on the reservations, we will strive within our regulations and the Government regulations to fill with Indians.

MR. BUGGS. Without depreciating post office jobs at all, it is true that it isn't too difficult to find someone who can carry the mails? Is that true?

MR. JOHNSON. That's correct. The big problem, honestly, is that we are stuck with examination procedure. Now, we are also stuck with the Veterans' Preference Act. I shouldn't mention "stuck." I'm certain that both of them are worthwhile programs. However, in Albuquerque alone—because here again it's a major employer—in Albuquerque alone most of our examinations or certificate of eligibles we receive from our national testing center in Los Angeles are encumbered by 10-point veterans. You cannot pass a 10-point veteran.

MR. BUGGS. Well, maybe we ought to do something, Mr. Commissioner, on—

COMMISSIONER MITCHELL. Well, we can't call off World War I and II.

MR. BUGGS. How many Indian veterans do you have? You don't know that?

MR. JOHNSON. No, I don't. Really I don't.

COMMISSIONER MITCHELL. That's a very different set of problems, I think.

MR. BUGGS. Yes.

I have no more questions.

MR. JOHNSON. I would like to make a comment if you don't mind. I did bring a copy as far as upward mobility of our people—I did bring a copy of our Postal Service management guidelines for postmaster selection if you'd care to have them.

COMMISSIONER MITCHELL. I'd like to have that as a part

of the Commission's files, if not in the record. And let's just make a note of that, please. I'm not sure we need it in the record, but I think we might need it in the papers associated with this hearing.

The problem is for each of you in meeting with us, and for us in meeting with you, that you are bound by the regulations you have inherited. It's a problem always for us to evaluate the extent to which you are enforcing them and the extent to which you feel enthusiastic about them.

But, in the end, some of the matters we have talked about with you are going to have to be discussed at the last hearing we have on this subject in this cycle, which is going to be in Washington, and there, sooner or later, there's going to have to be a confrontation between the United States Commission on Civil Rights and the United States Commission on Civil Service and between the United States Commission on Civil Rights and the Bureau of Indian Affairs and perhaps the Cabinet officer in charge of the entire department of which the Bureau of Indian Affairs is a part.

Because it's increasingly clear as we examine the Bureau of Indian Affairs that it comes into conflict with other bureaus and divisions within the department in which it operates. And sooner or later we are going to have to meet the president or Postmaster General or whatever he is of this new postal enterprise.

In almost every case what you see is the last gang in has sewed up the entrance to jobs for the next group that wants to be recognized and enter society. And we're going to have to do something about that.

I recognize your frustration as we get exasperated with you, but we get frustrated too, and I would hope that you share our firm conviction that it is possible for the Federal Government to be an employer who looks upon the Indians as a desirable group of employees and who is willing to let them move upward on the scale as it has every other—well, I can't say every other because many other minority groups have their problems with the Federal Government. The only group that doesn't is the white Anglo group. There the sky is the limit. For minority people otherwise the Federal Government has a much lower ceiling, to use aviation terms.

Well, gentlemen, thank you for coming.

Ladies and gentlemen, this concludes this day's hearing. You

have been just great. And we'll see you tomorrow morning if you want to come back when the Commission convenes again at 9:00 a.m. Mr. Rankin will be in the chair then.

[Whereupon, at 8:07 p.m., the hearing was recessed, to be reconvened at 9:00 a.m., Wednesday, November 15, 1972.]

UNITED STATES COMMISSION ON CIVIL RIGHTS

Wednesday, November 15, 1972

The U.S. Commission on Civil Rights reconvened, pursuant to recess, at 9:00 a.m., Robert S. Rankin, Commissioner, presiding.

PRESENT: Maurice B. Mitchell, Commissioner; Robert S. Rankin, Commissioner; John A. Buggs, Staff Director; John H. Powell, Jr., General Counsel; Paul Alexander, Assistant General Counsel; and J. R. Avena, Regional Director.

PROCEEDINGS

COMMISSIONER RANKIN. Ladies and gentlemen, will the hearing come to order?

We have a full schedule today. In fact, we go into the evening. And late in the afternoon we have unscheduled testimony, so I am going to try to keep it as close to schedule as I possibly can so as to afford an opportunity to those who want to be heard and who have not had the opportunity to be heard later in the day. We want to give everybody a chance to express his or her opinion.

This morning we are concerned with the State employment picture. And I call to the witness stand Mr. Paul Day and Mr. Bill Weahkee.

Will they please come to the witness stand at my left?

MR. POWELL. Is Mr. Weahkee here?

[No response.]

COMMISSIONER RANKIN. Will you check and find out about Mr. Weahkee?

Would you mind standing to be sworn in, Mr. Day?

[Whereupon, Mr. Paul Day was sworn by Commissioner Rankin and testified as follows:]

TESTIMONY OF MR. PAUL DAY, LAGUNA PUEBLO, SUPERVISOR FOR INDUSTRIAL PLACEMENT, NEW MEXICO STATE EMPLOYMENT SERVICE

COMMISSIONER RANKIN. Please be seated.

Mr. Powell.

MR. POWELL. Would you please state your name, tribal affiliation, address, and occupation?

MR. DAY. My name is Paul Day. I am a member of the Laguna Pueblo. I work for the New Mexico State Employment

Service, presently as a supervisor for industrial placement. I live here in Albuquerque.

MR. POWELL. You are presently employed by the employment security commission?

MR. DAY. That's right.

MR. POWELL. Would you tell us just a little bit about what that commission's function is?

MR. DAY. Presently the job I have is trying to get individuals or applicants placed in different jobs, which is skilled and unskilled labor jobs. Right now that is my prime function.

MR. POWELL. And how long have you been employed by the employment security commission?

MR. DAY. Five years and 4 months.

MR. POWELL. In the course of your experience as industrial placement officer, what special efforts are necessary and what efforts have been made or are being made to obtain employment for Indians by the State employment security commission?

MR. DAY. Presently, none, sir. They come in like any applicant and go through our intake interview and, if they like to see one of the counselors they so state, or they go through the job bank system that is employed in most employment services. They use this. Or they can come and talk with me.

To give you a little more on this, sir, presently before I was put into the industrial placement section we had a program called the Indian Human Resources Development program, which I was supervising for the last 4 years.

MR. POWELL. Let me make sure I understand you. This program, the Indian Human Resources Development program, was a program which at one time was in existence but no longer is in existence?

MR. DAY. Presently, no, sir. As far as we know it is not in existence.

MR. POWELL. When was that program phased out?

MR. DAY. About 7 months ago.

MR. POWELL. Would you care to tell us about that program and what it involved?

MR. DAY. Well, it involved outreach programs for Indians living on the reservation and Indians living here in town. We had files of all the Indians practically, most of the Indians, that are living on the reservation. We had separate files for these people. And people living in town here, we had files for these. And in the course of—

MR. POWELL. How were those files obtained?

MR. DAY. We went out into the field and talked to these

people, and interviewed them and made job descriptions and filed them according to their jobs or work they have done before.

First we had a time when most of our Indians were classified as laborers. I'd say about 90 percent of them were classified as laborers. And the women were classified as domestic workers. We had a time of changing this image that not all Indians are domestics or laborers.

MR. POWELL. Did the program involve interviews of prospective applicants by Indian interviewers?

MR. DAY. Yes, sir. We had three outreach interviewers and a counselor at the time, an Indian counselor, and three Indian outreach interviewers.

MR. POWELL. Now, you say this program is no longer in existence.

MR. DAY. No, sir.

MR. POWELL. Is there still an Indian file being maintained?

MR. DAY. No, sir. This file was put in with the regular files at the same time that it was phased out, and I'm the only Indian interviewer left from the program.

MR. POWELL. Other than yourself, then, there are no Indian interviewers?

MR. DAY. Presently, one. We have another lady that's working in the local office under the domestic service section. She's an Indian but she is working with everybody, not just Indians.

MR. POWELL. How is it that you identify Indians?

MR. DAY. The way we identified first was by their addresses and where they lived or the people we know actually, or we have gone on the reservation and found these people. But presently we have no way of identifying.

We were instructed at one time to identify by surname. But many Indians in this area have Spanish or Anglo surnames.

MR. POWELL. I understand, Mr. Chairman, that Mr. Weahkee has come in. Do you want to bring him up?

COMMISSIONER RANKIN. Please. Mr. Weahkee, I wonder if you would come to the witness chair?. Would you please remain standing, Mr. Weahkee?

[Whereupon, Mr. William F. Weahkee was sworn by Commissioner Rankin and testified as follows:]

TESTIMONY OF MR. WILLIAM F. WEAHKEE, STUDENT, UNIVERSITY OF NEW MEXICO

COMMISSIONER RANKIN. Please be seated.

Continue with your questioning, Mr. Powell.

MR. POWELL. Mr. Weahkee, we are talking about the Indian

Human Resources Development program. Mr. Day has been good enough to tell us something about it.

Mr. Day, has the employment security commission made other similar contracts with other Indian employment programs?

MR. DAY. No, sir.

MR. POWELL. Mr. Day, what is the effect of not having this program, this Indian Human Resources Development program? What is the effect on the effectiveness of recruiting Indians for employment by the State?

MR. DAY. Are you asking, sir, about putting people into the labor market or just working for the State?

MR. POWELL. Yes, let me correct that. The employment security commission, as I understand it, has the function of obtaining jobs in the private sector for prospective applicants. Isn't that correct?

MR. DAY. Yes, sir.

MR. POWELL. What is the effect of not having the programs you have been describing on obtaining Indian applicants for private employment?

MR. DAY. Well, it has come to the place where the Indian, you might say, has a very hard time trying to talk to a non-Indian interviewer when he is looking for work. If an Indian was to talk to him, another Indian, I think they more readily give information, or if the person would talk to him, you know, at a level where they'd understand.

So we're not saying that the Indians don't understand English very well, but, you know, we have our way of talking with each other.

MR. POWELL. Mr. Day, does your office also help to secure employment at the Bureau of Indian Affairs?

MR. DAY. We get what we call POB's [Personnel Office Bulletin] from the—

MR. POWELL. I beg your pardon? What do you call it?

MR. DAY. POB's. I think it's something about personnel bulletins from the Bureau of Indian Affairs offices, which used to come regular, but lately they have not been coming down to us any more. We haven't received any in our— They used to come to me, and I used to try to recruit from these POB's.

But many times these people, I'd send them over to the BIA personnel office and find that these jobs had been filled by interagency transfers, and so these people filled out an application, nothing else.

MR. POWELL. How long has it been since you stopped getting such notices from the Bureau of Indian Affairs?

MR. DAY. Approximately 4 months.

MR. POWELL. Four months? Do you have any knowledge as to why that would be?

MR. DAY. No, sir.

MR. POWELL. Mr. Day, in working in the area of securing private employment for Indians, have you confronted any particular problems that Indians may have in securing private employment? We have heard testimony, for example, regarding the stereotype of Indians—undependability in appearing at jobs and what not. What have you found? What has been your experience?

MR. DAY. During the time we had this program we had an interviewer who would also go to job development with employers with Indian applicants. And he would try to, say, educate the employer to the way the Indian works.

But we sent these people there, and at times we did get a little, you know, feedback on some of our Indians, same thing—that stereotype and will not—could not be used by some of these employers in town, that they are unreliable, didn't show up, just regular stereotype thing.

MR. POWELL. Mr. Weahkee, I don't know whether we have it in the record. It won't hurt to repeat it. Would you tell us your tribal affiliation, address, and occupation for the record?

MR. WEAHKEE. Yes, sir. My name is William F. Weahkee. I am a full-time student working on my master's degree for business administration. Unemployed. And I do live here in Albuquerque now. I moved down from Santa Fe. I quit my job to go back to school.

MR. POWELL. I see. Mr. Weahkee, prior to attending the University of New Mexico, we understand that you were director of the Concentrated Employment Program in northern New Mexico.

MR. WEAHKEE. Yes, sir, I was.

MR. POWELL. Would you tell us something about that program and what its purposes were and what it did to achieve those purposes?

MR. WEAHKEE. Yes, sir. I think the CEP [Concentrated Employment Program] as it is known throughout the Nation—There are about 80 CEP's throughout the Nation, and we are one that they call a rural type CEP. In other words, we serve rural type people, small cities, little cities, or even no cities.

We cover seven north central New Mexico counties which are highly depressed and all the 19 pueblos and two Apache reservations in New Mexico.

What we basically do is design manpower training, work

experience programs using local level or the institutions to design—help us design training for people to get them into jobs, jobs that have, you know, a meaningful wage, at least a Federal minimum wage of \$1.60 an hour or better. And we can send individuals away to school.

This is what we do basically. And we contract. We are a nonprofit private corporation, and we contract with the Department of Labor to carry out these manpower services. And we carry them out in conjunction with the employment security commission.

MR. POWELL. In conjunction with the employment security commission?

MR. WEAHKEE. Yes, sir.

MR. POWELL. How is that?

MR. WEAHKEE. Part of the CEP guidelines or regulations as put forth by the Department of Labor is that we subcontract our manpower services functions to the employment security commission of the State. We cannot contract with anybody else at this time.

MR. POWELL. So that in subcontracting with the State, in effect, the employment security commission as an agent of the State is being subsidized by the Federal Government?

MR. WEAHKEE. Right. It is subsidized above and beyond its original State allocation. In other words, we received \$1.5 million this last time. I quit September 15. So last year's program which starts January 1, ends December 31; on a yearly basis we received about \$1.5 million. Out of that we have to contract the manpower services package to the employment security commission, which amounts to about approximately \$230,000 a year.

MR. POWELL. I see.

MR. WEAHKEE. For administrative purposes only.

MR. POWELL. I see. On the basis of your experience in this program, what would you say are the major problems confronting Indians in obtaining employment in the private sector?

MR. WEAHKEE. Well, sir, if I may, I'd like to put some of this in my own words.

MR. POWELL. Please do.

MR. WEAHKEE. See, the situation that Paul Day was talking about, the Indian HRD [Human Resources Development], I was familiar with because I was working with the State agency at that time.

MR. POWELL. Fine.

MR. WEAHKEE. I was a State OEO representative at one time, and then after that I was the director for the Neighbor-

hood Youth Corps program for the All Pueblo Council. From that I went and became the director for the north central New Mexico Concentrated Employment Program, which is a program designed to help everybody, Indians and non-Indians.

Okay. Back in 1968 I was with the Governor's office at that time serving on the staff. The Indians had noticed that the employment security commission was not hiring any Indians throughout the State, especially when we composed at least 6 or 7 percent of the population at that time.

We found out from further studies that there's only two people hired by the employment security commission.

MR. POWELL. Two—

MR. WEAHKEE. Two Indian people hired by the employment security commission.

MR. POWELL. You're talking of two different things. You're talking about people being hired by the employment security commission, in this case only two Indians—

MR. WEAHKEE. Right.

MR. POWELL. —and you're also talking about people being referred through the program to the employment security commission?

MR. WEAHKEE. Right. I'll get to that and tie it up as fast as I can.

MR. POWELL. Take your time.

MR. WEAHKEE. Okay. And then I was in on a meeting with the leaders and the employment security commission leaders. At that time we found out there was only two Indians in very low positions in the State system, which has—I don't know—about 400 or 500 people. That's just my guess. I don't know what it was at that time.

But I think the State realized and the Indians knew for a fact that we weren't getting our share of these positions. So when we asked them to do something for us, their first reaction was, "We can't. All our positions are taken. We're frozen. There's no more positions available."

So, by coincidence I guess, the HRD, the Human Resources Development program, came into existence just about that time. Now, that was also money being funded to the Department of Labor. I think it's OEO money, but I'm not positive; but it's funded to OEO, suballocated to them. I mean suballocated from OEO to DOL, Department of Labor, and they carry out manpower functions. It was designed to correct, you know, these type of situations.

MR. POWELL. Here again, this is Federal money going to a State agency?

MR. WEAHKEE. Right. So the State was successful in getting some money, and they agreed at that time to call it the Indian HRD program, and they got enough funding for 21 positions throughout the State for Indians only. And those Indian positions would be in those areas where there is a high concentration of Indians, you know, like Gallup, Farmington, Albuquerque, Espanol.

I'm not so sure you're familiar with the State, but that's where the concentration of Indians are.

So we had 21 positions and enough funding to take care of that.

MR. POWELL. How much funding?

MR. WEAHKEE. I can only guess, sir. We never got those figures from the employment security commission. In fact, I think that's been part of our fight. It's been about \$130,000 to \$150,000 there.

But as the system has been going through, we found out because we have been working on this problem— We have been asking, where is that HRD money going to? The Indian commission board is working on it, and I was part of that audience. I mean, I was part of the group working with them.

We were asking where that money was going to, and they said "It's being used to serve Indians but is not for Indian positions any more. A lot of it is being phased out." In other words, we can only identify seven positions which are employment security commission personnel. And the employment security commission has only seven members left of the original 21.

MR. POWELL. Let me make sure we understand you. There were Federal monies going to the employment security commission, the purpose of which was to achieve 21 positions, 21 Indians employed by the commission throughout the State. So, how that money was expended, the sum and substance of that was that only seven positions were actually obtained? Is that correct?

MR. WEAHKEE. Well, sir, we started out with 21 positions, but through the years they have been phasing them out and not replacing them, so that now at this date, September 15 when I quit my job, I only knew seven people left on the Indian HRD.

MR. POWELL. There were 21 Indians?

MR. WEAHKEE. There were originally.

MR. POWELL. Now there are only seven?

MR. WEAHKEE. Right, but I still suspect that we are getting the money but it's not being spent for those purposes any

more. But the direct relationship is this: That out of that money, then, we come around with our CEP program. We are being funded in the amount of \$1.5 million this year. We started as a \$2 million program, but as we become more effective, you know, the money keeps going down.

So that the program was designed to serve 50-50 Indian and non-Indian. Fifty percent Indians. Even if they are a smaller majority, they were supposed to serve 50 percent of them because they had the higher ratios in the negative areas. In other words, higher unemployment rates throughout the villages. Higher death rates. You know, all the negative statistics were higher. And I'm pretty sure you're aware of those.

So as a result, to correct the problem, the Labor Department sunk in that \$2 million, and now \$1.5 million, to correct it.

So that we have put in our contracts that we will subcontract to you, the employment security commission, and we want Indians where there's concentration of Indians. And then that contract cost me about \$230,000, or my organization, to carry out the manpower services package.

Now, those positions pay for counselors, job developers, positions like training specialists, which are all professional positions. Then we have got stenos on the staff, and we have got what we call coaches.

Coaches are just at least high school graduates. They come from the local areas. They "bird-dog" our clientele. In other words, if Joe doesn't come to work, the coach will run out to his house and find him and tell him, "Why aren't you coming to work?" or, "Why aren't you coming to the training program?" etc.

Okay. Out of the 29 [sic] positions that I have paid \$230,000 for, the irony of the situation is this: I pay \$230,000 for 29½ positions. Okay. And I can only state what the program will look like, but I cannot tell them what it takes to run it. So in this sense the employment security commission comes back and tells me what they need in terms of manpower to run that design, the design of the program, to carry out the design of the program.

Okay. Then in the process we have found as of September 15 also that there's only seven Indians out of the 29½, and we have one counselor position, and he's a counselor 1, which is the lowest of the counselor positions, and he's out in Zuni. We have five coaches, which are the lowest positions, one in Zuni, one in Acoma, one in Isleta, one in Bernalillo, one in Taos. We had one in Santa Fe but he was released.

We, through the process of time and when we had attrition

and turnover in our staffing pattern, we have managed to get one other person, a counselor, for the Albuquerque area as an Indian to serve on one of our teams that— We operate our CEP by a team, so we have a team in Albuquerque.

We managed to get one counselor on there, but I guess when the ESC [employment security commission] found they had to cut back on some of its funds because the Department of Labor was telling them to do so—they were overspending or something—our Indian coach in Santa Fe had to go, and our counselor here in Albuquerque had to go.

MR. POWELL. How long has this program been in existence that you are describing?

MR. WEAHKEE. It's been in existence for 4 years now.

MR. POWELL. Has it been effective at all?

MR. WEAHKEE. We think so, sir. We operate on a performance standards type of operation. We state what we are going to do. We say we are going to place so many people, and we place them. Things like this.

Bragging a little bit, we are the number one rural CEP in the Nation, and we are number seven of all CEP's in the Nation according to our performance standards. So that I think we are pretty effective. We placed more people than we said we would place in a highly depressed area.

MR. POWELL. Commissioner Mitchell just passed me a note. You are describing a program which cost \$230,000—

MR. WEAHKEE. Yes.

MR. POWELL. —and it was aimed at achieving 29 positions in the program which was designed to achieve—

MR. WEAHKEE. To serve 50 percent Indians and 50 percent non-Indians.

MR. POWELL. But you only got seven positions. That's about \$30,000 per job. Is that correct?

MR. WEAHKEE. I think so. It's pretty darned high. Let's put it that way.

MR. POWELL. I would agree.

MR. WEAHKEE. Again this all ties in, believe it or not. It ties in.

Now, there is another CEP. We don't serve the Navajo people. The Navajos have their own CEP. And they buy this same program—are told to contract with the employment security commission again. Okay. The fact is they are sinking in a lot of money, and I'm thinking it's closer to \$300,000, or \$250,000 at least. And how many positions they got out of there I don't know.

But the whole thing ties to this: That when I questioned the

employment security commission about how many positions we got for Indians and if they are serving them or not, they say, "Yes, we are serving them. We have got 42 positions that are currently Indian people serving Indians."

And then my question next was, "How many of those are State personnel, State-paid people, people paid from your national allocation?" And they can't give me those figures.

So that I suspect the seven that I have got and the seven that the Indian HRD has and the 21 positions that make up the 42 positions that they say that they have is all money on top of their overall allocation. It's my money, it's HRD money, it's Navajo money that's coming to pay for those 42 positions.

And the point I'm trying to make is that the State employment security commission is not meeting its obligation of serving its people. And one of the defenses that they use is that, "Well, we try to get Indians in there, but we can never get them because they don't qualify."

MR. POWELL. I see.

MR. WEAHKEE. Now, that is the other part of the story. Now, we go to the State personnel. Their qualifications are pretty darn high. And under the heading of saying, "Well, you don't want incompetent people, do you?" we say, "No, of course not."

"Well, we just can't hire them because they don't qualify."

I think they have to have a college degree, and I think they have to have at least 15 hours of counseling before they can even break the counselor barrier, which is one of the top positions in the CEP's.

MR. POWELL. This is what Indians have to have before they can get these positions?

MR. WEAHKEE. Well, that's what everybody has to have, and the Indians are included in that. But the fact is we don't have that kind of people, and there's no provisions made to even lower the standards or even correct the situation artificially for the moment.

MR. POWELL. Let me give a chance for the Commissioners to ask questions. I have no further questions.

COMMISSIONER RANKIN. Thank you, Mr. Powell.

Commissioner Mitchell?

COMMISSIONER MITCHELL. Mr. Weahkee, I gather that it's Mr. Bachicha who is head of the employment security commission?

MR. WEAHKEE. Yes, sir.

COMMISSIONER MITCHELL. We're going to have him here later in the morning, and I'd like to make sure that I understand some of this before I start to question him.

Has he ever been to meetings of Indians who are concerned about this kind of problem?

MR. WEAHKEE. No, sir. Even when we met with the Indian commission or the board, he was not present. He sent his lieutenants down.

COMMISSIONER MITCHELL. But he has never personally as head of the employment security commission— He has never personally attended an Indian meeting about employment under his jurisdiction?

MR. WEAHKEE. To my knowledge, sir, no, sir, and I have been at most of them. And the only one I have seen him in was election time when he first came in, and that was the last time.

COMMISSIONER MITCHELL. That's always a good time to get them to come to meetings.

MR. WEAHKEE. Right.

COMMISSIONER MITCHELL. Mr. Day, we heard a lot of testimony yesterday from the University of California or Los Alamos or both about inability of Mr. Gutierrez who was grumbling about how there weren't enough pieces of pie for everybody. But he said he couldn't find Indians and that it was impossible to identify an Indian anyhow.

Now, if I understand you correctly, he could have gone to you, and you're a State employee, you're a known, identifiable person especially charged to do this work, and you could have identified Indians for him and taken him around and showed him Indians who were available for employment? Is that correct?

MR. DAY. Yes, sir.

COMMISSIONER MITCHELL. Have you ever had a conversation with Mr. Gutierrez along those lines?

MR. DAY. I don't know Mr. Gutierrez.

COMMISSIONER MITCHELL. Have you ever had a personnel director of any of the companies who testified here yesterday, Sandia and Springer or Los Alamos, come to you and say, "We're really looking for Indians, and you must know how to identify Indians who are looking for jobs. Would you help us?"

MR. DAY. I have had the lady from Sandia Laboratories come in one time, and we worked with her trying to get Indians placed in the clerical field. That's about all they came down there for.

COMMISSIONER MITCHELL. Did you get some Indians placed in that?

MR. DAY. We had a couple, I believe.

COMMISSIONER MITCHELL. Otherwise you have never seen any of them?

MR. DAY. The others from Springer, no, sir, or any other companies.

COMMISSIONER MITCHELL. How about the Bureau of Indian Affairs when they have job openings? Would they come to you?

MR. DAY. No, sir. They just send out a bulletin that they have—

COMMISSIONER MITCHELL. But they don't come to you and say, "Help us find Indians?"

MR. DAY. No, sir.

COMMISSIONER MITCHELL. Any reason for that would you think?

MR. DAY. I don't know. Each organization has their own little kingdom, you know. If somebody else gets in it, you know, it's no good. So they all hold on to their little jobs.

COMMISSIONER MITCHELL. In other words, they would rather find their own people—

MR. DAY. That's right.

COMMISSIONER MITCHELL. —than ask you to be a source of employment for them?

Now, you serve the All Indian Pueblo Council, don't you?

MR. DAY. Presently, yes.

COMMISSIONER MITCHELL. Have you tried to find jobs at any of the pueblos or in the pueblo areas?

MR. DAY. Yes, we have tried to work with what we call the community action programs on the reservations.

COMMISSIONER MITCHELL. How about—

MR. DAY. And, you know, try to place Indian people into these programs. But again it's up to the directors or personnel selection committees.

COMMISSIONER MITCHELL. How much luck have you had?

MR. DAY. Not very much, sir. We have had some Indians been placed in these jobs.

COMMISSIONER MITCHELL. Have you ever sent a qualified Indian out for a job who was turned down in favor of someone who was less qualified?

MR. DAY. Yes, sir.

COMMISSIONER MITCHELL. So you send a qualified Indian into a community action program in a pueblo and he is rejected because they prefer to hire a non-Indian with less qualifications?

MR. DAY. That's right. Let me just bring one of these up.

When the University of New Mexico still had the Indian community action program, through inside information I found out there was a language specialist position opening up there, so I sent a person up there that we felt was pretty well qualified that could work with different groups of people on the

east coast and was a college graduate for this position.

After the person got up there, he was told there was no such position available as a language specialist. The following day a non-Indian was given the position to work with the Indian children in this area which he had no knowledge of their language at all.

COMMISSIONER MITCHELL. And this project was under the direction of the University of New Mexico?

MR. DAY. Yes, sir, through the ICAP [Indian Community Action Program] program.

COMMISSIONER MITCHELL. The University of New Mexico, of course, has responsibility for an affirmative action program, uses Federal funds, and technically can't behave itself this way.

MR. DAY. Yes, this was an OEO program.

COMMISSIONER MITCHELL. Well, we seem to have a lot of trouble with the universities.

MR. DAY. We have a lot of trouble with universities trying to get our Indian people placed up there.

COMMISSIONER MITCHELL. How about the University of New Mexico? Do they employ many Indians?

MR. DAY. Only for janitors, yes.

COMMISSIONER MITCHELL. Nothing else?

MR. DAY. No.

COMMISSIONER MITCHELL. And they don't employ Indians generally in programs under their jurisdiction either?

MR. DAY. Very seldom do they. They have their own personnel office up there, and they have a test. I don't know why you have to take a test to push a broom.

COMMISSIONER MITCHELL. Well, sometimes you have to take a test to push a broom if they don't want to give the job to certain people.

MR. DAY. That's right.

COMMISSIONER MITCHELL. Thank you.

COMMISSIONER RANKIN. Mr. Buggs?

MR. BUGGS. Mr. Weahkee, as I recall, the CEP program originally was funded to OEO, and OEO ran the CEP program for a while, and then it was required that OEO contract with Department of Labor to run that program, and the Department of Labor sort of delegated that responsibility down to the State level to the employment security commissions. Is that right?

MR. WEAHKEE. In many States, yes, but in many States they are run by private corporations or even companies at times.

MR. BUGGS. While OEO was running it, were you involved

with it at that time, when OEO was the primary agency developing the CEP program?

MR. WEAHKEE. I was with the OEO just about the tail end of that when it just came through as a concept of getting down to the local levels and letting the local level run their own programs, and from there I went to the All Pueblo Council under the Neighborhood Youth Corps, so I didn't follow it for that period of time.

MR. BUGGS. Then you don't know whether or not under OEO responsibility the CEP program was run any better than it is now?

MR. WEAHKEE. No, sir. I think you'd have to put that on an individual basis. Some CEP's are good. Some are not too good. That type of thing.

MR. BUGGS. No more questions.

COMMISSIONER RANKIN. Mr. Weahkee, when you were running the CEP program and you spent \$200,000 and you secured the employment I think of seven Indians and 23 non-Indians, did anybody ever review your work to see if that money was well spent or not? Did you report to anybody or was there any criticism, any commendation?

MR. WEAHKEE. Yes, sir. Both ourselves and the Department of Labor were asking questions about why we're not getting enough Indians through there, especially in areas where they are supposed to be served.

COMMISSIONER RANKIN. But they thought this was a reasonable return on investment? Is that right?

MR. WEAHKEE. We didn't think so, sir. That's why we're questioning it. We're thinking it's too high a price tag. In fact, we want to cut it down to something like \$120,000 a year.

COMMISSIONER RANKIN. What did they use this money for? I mean irrespective of—

MR. WEAHKEE. Mostly administrative, sir. Mostly for salaries, transportation and—

COMMISSIONER RANKIN. It reminds me of a united charity organization we had at home joined in. Ninety cents out of every dollar went for overhead. Is that what goes on here, about?

MR. WEAHKEE. Just about.

COMMISSIONER RANKIN. And only 10 percent goes to the recipient.

MR. WEAHKEE. That's what we're thinking, sir.

COMMISSIONER RANKIN. Yes, I understand.

Well, I thank both of you gentlemen very much for your testimony. You have certainly shown the shortcomings, how much it costs, how effective and ineffective it is, and we will

certainly go into this matter as we take other witnesses up and discuss this subject later on this morning.

Thank you very much.

I now want to call several gentlemen to the witness stand: Mr. Ray Powell, Chairman of the State Personnel Board. Mr. Richard Heim, Department of Health and Social Services. Charles Spath, State Personnel Director. Richard Shaffer, Director of Personnel, State Highway Department. And David Urioste, Commissioner of the Motor Vehicle Department.

Would you please come and take the chairs here at the witness stand? Will you remain standing until you take the oath?

[Whereupon, Messrs. Ray Powell, Richard Heim, Charles Spath, Richard Shaffer, and David Urioste were sworn by Commissioner Rankin and testified as follows:]

TESTIMONY OF MR. RAY B. POWELL, CHAIRMAN, STATE PERSONNEL BOARD; MR. RICHARD HEIM, EXECUTIVE DIRECTOR, STATE HEALTH AND SOCIAL SERVICES DEPARTMENT; MR. CHARLES SPATH, STATE PERSONNEL DIRECTOR; MR. RICHARD SHAFFER, DIRECTOR OF PERSONNEL, STATE HIGHWAY DEPARTMENT; AND MR. DAVID URIOSTE, COMMISSIONER, MOTOR VEHICLE DEPARTMENT, STATE OF NEW MEXICO

COMMISSIONER RANKIN. Thank you. Will you be seated?

Would each one of you identify yourself to us?

MR. RAY POWELL. I am Ray Powell.

MR. HEIM. I am Richard Heim.

MR. SPATH. Chuck Spath.

MR. SHAFFER. Dick Shaffer, Highway Department.

MR. URIOSTE. David Urioste, Motor Vehicles.

COMMISSIONER RANKIN. Thank you very much.

Mr. Powell.

MR. POWELL. Beginning with the gentleman on my left, you stated your name, but for the record we need other information. Would you each please state your name, address, and position beginning with the gentleman on my left?

MR. RAY POWELL. I am Ray B. Powell, and I'm appearing here this morning as Chairman of the State Personnel Board. Our office is located on South Capitol Street in Santa Fe.

MR. HEIM. I'm Richard Heim, Executive Director of the New Mexico Health and Social Services Department. The address is the PERA Building, Santa Fe.

MR. SPATH. Chuck Spath, State Personnel Director, 130 South Capitol, Santa Fe, New Mexico.

MR. SHAFFER. Dick Shaffer, New Mexico State Highway Department, 1120 Cerrillos Road in Santa Fe.

MR. URIOSTE. David Urioste, Commissioner of Motor Vehicles, Bataan Memorial Building, Santa Fe, New Mexico.

MR. POWELL. Mr. Powell, would you please explain the function and purpose of the State personnel board?

MR. RAY POWELL. Yes, I'd be happy to do that. The State of New Mexico has a State Personnel Act that went into effect in June of 1961. That act established a State personnel board of five members, and the purpose of the act was to establish employment on the basis of qualification for the State of New Mexico and replaced a long-standing patronage spoils system.

MR. POWELL. Mr. Powell, what are the board's policies with respect to the employment of American Indians?

MR. RAY POWELL. The board's policy is equal employment opportunity for all, and in practice we recognize there is a special problem in the employment of the Indians, and after several years of installing a merit system and getting it to work— That took time, and the resources were limited. In the recent past, the last year or year and a half, we have been able to use some Federal funds to work particularly on the problem of employing the American Indian.

MR. POWELL. Our investigation of State employment policy suggests that the State has not been very successful in achieving equal opportunity in fact, as opposed to theory, for Indians. Indians appear as employees of the State in very, very small numbers.

What, if anything, have you advised the various State agencies to do with respect to this problem? What is going on now? I take it that you are addressing yourself to the problems. Would you care to tell us something about it?

MR. RAY POWELL. Yes, we are, Mr. Powell.

MR. POWELL. I understand there was a Governor's report recently in this regard?

MR. RAY POWELL. Yes, that is correct. Let me first say that we may indeed have been slow in coming to the special effort in this area, but we have generated the Governor's report, of which I believe you have a copy, which was distributed early this year and that required— Well, it summarized the employment situation by ethnic group and between the sexes.

It was accompanied by a directive from the Governor to each department to establish an affirmative action plan with specific goals and dates for the achievement of those objectives.

Now, in addition to that, within the State personnel office itself we have been using Public Service Careers funds to do a number of things, to improve the recruitment of Indians, to supply training for the new employees, and to assist them to rise in State government as rapidly as their performance would permit.

MR. POWELL. We have heard it said in the context of the employment security commission that in order to achieve

success in employing Indians you have to have Indian people in the personnel department to go out and seek Indians, to interview Indians, and what have you.

Is that being done? Do you have Indian people involved in the personnel procedures in the various agencies who focus not only on the problem generally but particularly on getting more Indians in view of the very small number of Indians employed by the State?

MR. RAY POWELL. Yes, again special recent effort with the intergovernmental personnel funds. We do have an Indian recruiter who visits the pueblos and reservations and publicizes our need for employees and solicits applicants and does some counseling of members of the pueblos and tribes who do not now have the minimum qualifications necessary.

MR. POWELL. How long have you had that Indian recruiter?

MR. RAY POWELL. I have to turn to Mr. Spath. It's a matter of months. Of the order of 6 months.

MR. SPATH. Two months.

MR. RAY POWELL. Two months. Excuse me.

MR. POWELL. Two months?

MR. RAY POWELL. Yes.

MR. POWELL. Do you suppose that one Indian recruiter is enough?

MR. RAY POWELL. Probably not.

MR. POWELL. Would you consider getting more?

MR. RAY POWELL. Indeed. We are considering that currently.

MR. POWELL. Mr. Spath, would you address yourself to the question of how many Indian recruiters, in view of the serious problem, you would need to achieve some impact in the near future?

MR. SPATH. Yes. We will be able to make a better judgment on that as soon as we see the results of the one. But it is obvious that the need is considerably greater than one.

We did have an additional one who the Indians hired from us at a higher pay rate under Federal funds. And I think this is one thing that most agencies experience with these type of people—that as soon as you get one that can do you good and get him trained and is accepted by the Indian, that it is not unusual for that same person to be hired by the Indians. And by Indians I mean either by the Bureau of Indian Affairs, Indian Health Service, and/or the tribes themselves through federally-funded programs which pay more than we can pay. And because of that, then, you start the process over again.

And I am mentioning specifically about Ed Leon working for the Northern Pueblos. And there is a certain amount of money spent on orientation and training of such a person, and then as

soon as he leaves you start all over again.

So really this process has gone on through Public Service Careers. And Bill Baca, the Indian we currently have on for about a period of a year. We have this same problem in other areas.

For example, in LEAA [Law Enforcement Assistance Administration], we had some Indians on the staff, and the Indians hired them for the staff themselves, the Navajo Tribe. And as a result of that we have a problem of keeping the Indians for what we pay because, once they are trained, then, naturally we would expect them to look for more money—we're all interested in more money—but they leave, and then you start the process all over again.

MR. POWELL. But let's try to determine what we are talking about and where we are starting from. Our investigation indicates that of all the boards, State boards, some 30-odd State boards, Indians are virtually on none, with one or two exceptions.

Now, isn't this something that I take it that Mr. Powell as chairman of the board which oversees the State personnel policies—Don't you think that an effort ought to be made to make sure that these boards which affect the problems of all citizens, Indians and non-Indians alike, and shape the lives of Indian citizens, are peopled by not only Indians but Indians and other minorities? Isn't that an important beginning step?

And have I indicated the situation correctly? It is true, isn't it, that the boards, the State boards, the State commissions, with one or two exceptions, virtually have no Indians? Isn't that correct?

MR. RAY POWELL. I believe that's correct, Mr. Powell. I'm not intimately acquainted with the membership on boards.

MR. POWELL. This is a matter that our investigation indicates is of great concern to the Indian people.

MR. RAY POWELL. Yes.

MR. POWELL. And don't you as chairman of the State personnel board, while you may not have any jurisdiction over who is on those boards, you certainly can advise the Governor and his people about the importance of this problem which has an impact in personnel terms?

MR. RAY POWELL. Yes, we certainly can do that. I must admit we have not to this point.

COMMISSIONER RANKIN. Do you monitor these boards, Mr. Powell?

MR. RAY POWELL. No, we do not, Commissioner.

MR. POWELL. One other thing. Can we in terms of ball park figures— Our investigation indicates that in the private sector Indians are in very, very small numbers. It also indicates that

the State is no better. We feel that the State should set the pattern for private employers. The State ought to point the direction in which private employers ought to go.

What are the numbers, Mr. Spath, in general terms? Isn't it very small? I think we have the figures somewhere.

MR. SPATH. Yes, it is. The current figure as of November 7 was 221 Indians total in State government.

MR. POWELL. Out of a total State employment of what?

MR. SPATH. In excess of 12,000.

MR. POWELL. So that means in percentage terms you have point-zero-what?

MR. SPATH. Let's see.

MR. POWELL. 1.9? Is that—

MR. SPATH. It would be 2.0.

MR. POWELL. Do you think that is good enough?

MR. SPATH. No, we do not think it's good enough.

COMMISSIONER MITCHELL. May I while you're on this one point? Of that 12,000 you have 221 Indians, but you also have some black employees and you have some Mexican Americans, Chicanos?

MR. SPATH. Yes.

COMMISSIONER MITCHELL. Do you have the figures for those?

MR. SPATH. I do. The total State figures would be, if we took the three minorities, the three minorities would represent 58 percent of the total State employment. That would be Spanish 55.2 percent, and the Indians 1.9— No, it's less than that. No, that's right. Indians 1.9 percent, or 2 percent now because this report was issued last year. And we have picked up some since then, about 23. And the Negro 0.8 of 1 percent.

COMMISSIONER MITCHELL. The reason I'm asking is: Is it possible that what is happening is that the State is taking the position that if it can find Spanish or Mexican American help that, in effect, it is meeting its obligations under affirmative action programs and in the face of any charge of limited opportunity or deprivation of equal opportunity for any citizen, and that in effect the Indian is paying for some of the high, relatively higher, employment rates for other minorities?

MR. SPATH. No, I would say that that's not true, and I think our report indicated that the two key problems we saw were the Indians, first, because proportionately they were the worst shape of any of the groups, the blacks second, and then with the Spanish Americans we essentially have another problem, and that is where they are located in the work force.

Although they are represented at 15 percent more than their fair share if you were going to have proportionate representation, they are also located in the lower level jobs as a rule. So in that particular problem the key problem is certain

occupational areas and particular levels in midmanagement and at the top.

COMMISSIONER RANKIN. Mr. Powell?

MR. POWELL. Now, either Mr. Powell or Mr. Spath—Mr. Powell, you may want Mr. Spath to address this question—what is actually being done now on this problem? And do you think it's efficient? We have heard, for example, that the merit system, the so-called merit system, has several kinds of deficiencies. One, it's often not job-related, in that it doesn't measure the skills which are actually required of the job. And, two, that because of various language and cultural problems it doesn't measure the skills of Indians.

Is there any thinking being done on that question now? And is there any thinking about the necessity of examinations, written examinations, for jobs which don't require a great deal of verbal ability?

MR. RAY POWELL. Mr. Powell, if I may, I'd like to add a sentence to Commissioner Mitchell's last question and then refer the mike to Mr. Spath.

MR. POWELL. All right, sir.

MR. RAY POWELL. I think one of the reasons that the Spanish surnamed are so numerous in the State government is that there has been a history of employment at State and local government level for the Spanish people. That stems from a number of things. I think the primary reason has been that private employment in the State has been severely limited until rather recently. And the Indian population do not have that history of work with the State. And so I think it behooves us to work hard to bring them into State and local government.

MR. POWELL. Particularly, Mr. Spath, isn't there a need to monitor these affirmative action programs? Our investigation indicates that the human rights commission has this responsibility or will be given this responsibility. Is that right?

MR. SPATH. Yes, that is true. When we originally for the first time in New Mexico conducted a statewide survey of all minorities and where they were in the work force and at what levels, etc., that was done by a self-identification system whereby, once the employee worked for the State, we developed a form which went to the employee, came back, and then we had the data. That also is what resulted in the equal employment opportunity report.

And at that same time the Governor issued a directive requiring agencies to do certain things, and among those was to develop an affirmative action plan. At that time those plans were furnished to us, shipped through us, you might say, to the human rights commission, and the actual role of follow-up or

evaluation or effectiveness of those plans is a responsibility of the human rights commission.

That was a big new workload for them, and they were not adequately staffed to really even carry out their complaint process and their hearings and investigations. So you might say it really is an unrealistic expectation that a good job could be done at current funding in follow-up on the plans.

MR. POWELL. Then would you recommend that the resources of the human rights commission be increased—

MR. SPATH. Yes.

MR. POWELL. —so it can begin to meet its new responsibilities?

MR. SPATH. Yes.

MR. POWELL. Is there any prospect of that?

MR. SPATH. Yes, and we have so recommended. At the time—

MR. POWELL. I see.

MR. SPATH. —that that came about there was some question about where should the responsibility lie, and we believe that the agency itself has a responsibility for self-evaluation and follow-up, but it can't stop there because someone else has to look.

The question was: Should it fall with us or should it fall with some outsider that is not really in the personnel game? Because they interact so closely. And at that time it was felt that an independent person who was not involved in the personnel game and the entry and testing, and this, would really take a fairer look than if it were done in-house.

MR. POWELL. We have heard testimony about the importance of teeth. What kind of power does the human rights commission have to see to it that the affirmative action plans don't just merely lie fallow but are actually implemented? In reviewing a plan, for example, when it finds an agency is not meeting its responsibilities, what can the human rights commission do?

MR. SPATH. They really have no power by statute. Their power would really be one of persuasion. And if that did not work, to actually report the deficiency to the Governor and have the Governor order a particular agency head to do something about it.

MR. POWELL. You know, we have progressed somewhat. We have moved out of the conciliation business in employment and moved into the enforcement area. Do you feel that there ought to be a mechanism wherein, if agencies were not effective, that there would be a way of assuring that it would be done?

I take it that, since the Governor is the boss, he can see to it that this is done. Is that correct?

MR. SPATH. That's true.

MR. POWELL. All right.

Mr. Heim, as executive director of the health and social services department, what are your responsibilities?

MR. HEIM. I'm responsible for the administration of an umbrella agency which administers four major program areas—environmental improvement, public health, public assistance, and social services.

MR. POWELL. What is the total number of employees employed within your agency?

MR. HEIM. We have approximately 1,700 at the present time.

MR. POWELL. Of that figure, how many are Indians.

MR. HEIM. Approximately 59.

MR. POWELL. A percentage of about 3.4?

MR. HEIM. 3.4, yes.

MR. POWELL. From January 1, 1972, to December 30, 1972, how many employees did you hire?

MR. HEIM. What were the dates again?

MR. POWELL. January 1, 1972, to September 30, 1972. How many employees did you hire during that period?

MR. HEIM. Approximately 500.

MR. POWELL. And of that 500, of those 500 people that were employed in that 9-month period, how many were Indians?

MR. HEIM. Approximately 30.

MR. POWELL. Approximately 30? Something like 6 percent?

MR. HEIM. Six percent, yes.

MR. POWELL. New hires? So that left you, though, in view of the attrition rate, with the number that you were just talking about? Is that correct?

MR. HEIM. Yes.

MR. POWELL. At what pay scale were these Indians hired?

MR. HEIM. Sixteen were hired below a range of 30 according to State compensation plan, or starting rate of \$278 a month up to \$550 a month. Approximately 13 were hired in the ranges 30 to 39, or starting rate of \$360 a month to an \$860 a month top.

And one between the ranges of 40 to 49, which has a range of \$475 a month to \$1,350 a month at the top. And one in a supervisory position. Well, excuse me. That's duplicated information.

MR. POWELL. Mr. Heim, what do you think accounts for the severely low number of Indians employed by the health and social services department?

MR. HEIM. Well, the health and social services department is in the State personnel system. By law and by regulation we can only employ individuals who are presented to us on a register from the State personnel department.

MR. POWELL. And what you're saying is that Indians—that there are so few Indians on that register and the universe of

people you can hire is so limited that this—

MR. HEIM. That's correct.

MR. POWELL. And you would say that the requirements of the State personnel board that come out of their criteria are such that they hinder the employment of Indians? Would you say they help or hinder the employment of Indians?

MR. HEIM. Well, I'd like to go back to what Mr. Powell said. I think the State personnel board and the State personnel department are genuinely interested in providing an equal employment opportunity for all. I think there is a problem in qualifying Indians for employment, and I'm not conversant enough with the problem to know if Indians are not applying or if not enough are able to pass the test to get on the registers. I cannot answer that.

MR. POWELL. Well, in the context of the need for Indian employees, particularly with respect to the services afforded Indians, what is now, if anything, being done about the problem?

MR. HEIM. Well, among all State agencies we do have an affirmative action plan. We have taken a number of steps. This does not specifically relate only to Indians, but I think, overall, I think this will indicate the department's position.

I have designated an equal employment opportunity counselor in the department who reports directly to me. Together with this counselor we are touring the State, having meetings with all of our personnel in various parts of the State.

We have completed seven such meetings as of this date, and during these meetings we do talk about the affirmative action plan and stress to supervisors and employees that all employment opportunities in the department will be filled on the basis of qualification. We want to remove all the artificial barriers which do exist to bringing employees in.

We have worked with the State personnel department to validate some of the tests that are being used in the department, and eventually we hope to have all of them validated, again to remove any questions which are not job-related and questions which tend to be discriminatory towards any ethnic group.

Furthermore—this relates to the Indian population itself—we initiated action early this year with the Bureau of Indian Affairs asking for their help in alerting the Indians that we did have job opportunities in the department and we did want applications from Indians.

Several years ago the department created the position of interpreter case assistant in conformity with the State person-

nel system so that we could bring in Indians at a higher level. We have experienced problems that I think Mr. Spath has pointed out—that some of our supervisors feel that we are a training ground for Indians, particularly in the social services field, because the Bureau of Indian Affairs and the tribes themselves employ these people. We train them. They hire them away from us because they can pay them more. So we have had quite an attrition. Unfortunately, I do not have any data.

COMMISSIONER RANKIN. Don't you have that same problem with respect to Anglos or others that they are lured away by higher wages by other agencies?

MR. HEIM. Yes, we do, but I don't think to the same extent that we have experienced it with our Indian employees.

COMMISSIONER RANKIN. Would a higher pay scale help you?

MR. HEIM. Yes indeed. We'd sure like to have higher pay scales for all our employees.

COMMISSIONER RANKIN. Thank you.

MR. HEIM. In this connection may I point this out: that the median education level in the department is 2 years of college. So that, you know, when we get an Indian in who meets this qualification or one that comes in and is trained by us, you know—who does not have the educational requirements for a job but where we, in effect, underfill a position with an Indian and train that person to the point where the person can be promoted to the job, you know, to the job range that he is filling—that's where we run into the problems of being raided by other agencies.

COMMISSIONER RANKIN. Would you ever take them without 2 years of college work?

MR. HEIM. Oh, yes. As a matter of fact, we do, and we have. We call this an underfill.

COMMISSIONER RANKIN. You have no record of how many have obtained positions this way?

MR. HEIM. I do not. One of my staff is present. Let me just—Mr. Chairman, this is Mr. Lopez.

COMMISSIONER RANKIN. The minimum is 2 years you said? Is that right?

MR. HEIM. Yes. This is Mr. Lopez, the director of our public assistance agency, and I think he's more conversant with this than I, if you'd like him to answer that question.

COMMISSIONER RANKIN. Well, I would.

He has to be sworn? I don't think you have to be sworn in on this technical stuff.

MR. LOPEZ. I have here a staff pattern for San Juan County

where Indians receiving financial assistance total about 90 percent, and here we have some case worker positions on this particular page I'm looking at, two case worker positions, which are being filled by interpreter case assistant Indians.

What this means is that they will hold these higher positions until they can qualify not by education but by time in grade, at which time they will be promoted to that position.

We also have some in McKinley County, where we have one other interpreter case assistant filling a case worker 1 position.

So that whenever possible we place the Indians in the higher positions until they are able to qualify for that position, and again, as I mentioned, not through any educational requirement but by the fact of experience.

COMMISSIONER RANKIN. Okay. Thank you.

MR. POWELL. Mr. Urioste, how many people are employed by the motor vehicle department?

MR. URIOSTE. Presently we have 250, sir.

MR. POWELL. 250?

MR. URIOSTE. Yes, sir.

MR. POWELL. Of that number, how many are Indians?

MR. URIOSTE. We don't have any Indians on the staff now, sir.

MR. POWELL. None whatever? Members of my staff have been in touch with the administrative aide of Governor King, and it is my understanding that yours is one of two departments which the Governor has directed to take special efforts to hire Indians. Is that correct?

MR. URIOSTE. Yes, sir.

MR. POWELL. Through your field offices?

MR. URIOSTE. Yes, sir.

MR. POWELL. How many Indians have been hired since December 31 of last year?

MR. URIOSTE. Offhand, one that I know of, sir, and she stayed with us for about 2 weeks and left us. This was a girl hired in Bernalillo.

MR. POWELL. And how many people have you hired since that time? How many people have you hired since December 31, 1971?

MR. URIOSTE. I don't have that figure with me, sir.

MR. POWELL. Our investigation indicates you hired 97 people. Does that sound about right?

MR. URIOSTE. That's probably about right, yes, sir.

MR. POWELL. Now, in view of the Governor's directive and in view of the fact that until just recently you had no Indian

employees and you have field offices all over the State, do you think that is an adequate performance?

MR. URIOSTE. Mr. Powell, we're against the same thing as health and social services [department]—under State personnel for hiring of our employees. We screen our employees or hire our employees off the eligibility rosters that we receive through State personnel.

One thing that I think I should point out to you, sir, is for the Indian populated centers, which is McKinley and San Juan County, we do have operations in both of those places. However, they are not State-operated. We contract with the city of Farmington, the city of Bloomfield, and Aztec, and in Gallup we do the same thing.

In other words, they perform the service for the department of motor vehicles, but they do the hiring of their employees. We have no jurisdiction as far as personnel is concerned.

MR. POWELL. They do this by contract?

MR. URIOSTE. Yes, sir.

MR. POWELL. And you are suggesting that the fact that you contracted it out means you have no responsibility for the personnel policies of the people who are performing a State function?

MR. URIOSTE. Only in the work, sir, not in the area of personnel, sir. The State is responsible for that.

MR. POWELL. I would suggest to you that, if it's done by contract, that there is substantial precedent that when you contract you can require the contractee to carry out policies that are of concern to you. That's certainly the theory of the Office of Federal Contract Compliance. You are, in effect, buying services here, are you not?

MR. URIOSTE. Yes, sir.

MR. POWELL. I would suggest that you look into that. And I think that if it is important for Indians to be employed by the motor vehicle department or by subcontractees to the motor vehicle department, that you could do something about it, particularly in areas where there is a high Indian concentration. I don't think the State should duck its responsibility in the personnel area by contracting to local municipalities this function.

MR. URIOSTE. It's a question of economics, Mr. Powell, as far as contracting with those entities. It's a question of budget. We don't have the budget to establish State-operated field offices in those areas, so consequently we have to look to this other means for performance of our work.

MR. POWELL. But in doing so you don't have to— You still

could carry out your personnel policies, could you not?

MR. URIOSTE. I don't know if the city fathers in those localities would allow us to interfere with their operation.

MR. POWELL. I think the Commission might be interested in an opinion from the attorney general, then, on this question.

MR. URIOSTE. Yes, sir.

MR. POWELL. Of the State of New Mexico.

COMMISSIONER RANKIN. Would you be willing to get an opinion from the attorney general on this point?

MR. URIOSTE. Yes, sir. I certainly would.

COMMISSIONER RANKIN. Okay. Thank you.

COMMISSIONER MITCHELL. Let me see if I understand you now. What you say is that, in circumstances where the motor vehicle division does not want to operate its own office for economic or other reasons, you make a contract with a municipality, a city, or something like that, and you do not say to them that the people who would do this work for the State must conform with the State policies with respect to affirmative action programs, antidiscrimination provisions, and the like?

MR. URIOSTE. No, sir. Our contract does not provide for that currently. Our contract provides only for handling of records for the department of motor vehicles. This is in the area both of titling, registration, and the driver's licensing areas.

COMMISSIONER MITCHELL. So if any municipality had a rule they wouldn't hire an Indian, they wouldn't hire a Chicano, they wouldn't hire a black person, or a Mexican American, that's okay with you?

MR. URIOSTE. I haven't looked at the personnel practices as far as those entities are concerned, sir.

COMMISSIONER MITCHELL. That's not the answer to my question. If you looked at it and you discovered that they had rules or that they never did hire anybody except white Anglos, let's say, would that be all right with you?

MR. URIOSTE. No, sir, it wouldn't.

COMMISSIONER MITCHELL. Well, would you take the contract away from them?

MR. URIOSTE. In all probability, yes, sir.

COMMISSIONER MITCHELL. Now, what are the practices of these agencies? Do you know?

MR. URIOSTE. No, sir, I do not.

MR. POWELL. Well, certainly by contract provision you could require the agencies to comply with State employment policies in employing people, and I think that we'd like to hear from the attorney general in that.

MR. URIOSTE. All right, sir.

MR. POWELL. What specific—

MR. BUGGS. Mr. Powell, may I? How do you expect, then, to carry out the Governor's requirement?

MR. URIOSTE. Mr. Buggs, we have also developed our action plan called for by the Governor in reviewing the programs. Now, we review the programs only within our agency and State-operated field offices that we have throughout the State. We are continually doing that. We have appointed a counselor in the department of motor vehicles that evaluates the position reports and the number of—or the classes of jobs that are available and how they are filled.

MR. BUGGS. What does the review tell you now? What does that review that you have inaugurated tell you?

MR. URIOSTE. At the present time, the breakdown that we have as far as employees are concerned, it indicates that we have 208 Spanish Americans in the department of motor vehicles, 41 Anglos, and 1 colored.

MR. BUGGS. Then what do you do about the fact that there are no American Indians?

MR. URIOSTE. Again, in the recruitment of the Indian people we have to subject ourselves to the eligibility rosters that are furnished to us by State personnel to hire people.

MR. BUGGS. You know, this is interesting. I used to run the Human Relations Commission for Los Angeles County, and all of the county departments got their personnel from the same civil service list just as you do. We had one, the county probation department, that had 63 percent of all of its personnel minority group people, Chicanos, blacks, Asian Americans, and we had another one, the county engineer, that had only 2 percent.

Now, they got them all off the same list, but the probation department had 63 percent—and I have reference here now, incidentally, to clerical personnel—63 percent, and the county engineer had only 3 percent. The only rationale that we could come to was that the probation officer cared a heck of a lot more than the county engineer did.

It seems to me we have to draw that same kind of conclusion to some extent here: that if you use the same list, if anybody gets American Indians off of a State personnel list, it would seem to me that everybody could. Wouldn't you agree?

MR. URIOSTE. Yes, sir.

MR. BUGGS. Thank you.

COMMISSIONER RANKIN. Mr. Powell?

MR. POWELL. Mr. Shaffer, briefly, what are your duties as

director of personnel for the State highway department?

MR. SHAFFER. I am chief of personnel management for the highway department. We are the largest of the State agencies. I have a staff of assistants that work with me in all personnel matters. It includes working with the State personnel office on recruitment, job evaluations, desk audits, processing reams and reams and reams of paper. I have been assigned as in-house EEO officer. I am also right now in the process of preparing to negotiate a union contract. That's just some of the things that I do.

MR. POWELL. Then, basically, you have your hand on the lever of action vis-a-vis personnel for the State highway department?

MR. SHAFFER. Yes, sir.

MR. POWELL. What is the total number of employees in the State highway department?

MR. SHAFFER. As of day before yesterday our total number of employees was 2,878.

MR. POWELL. 2,878?

MR. SHAFFER. Yes, sir.

MR. POWELL. Of that number, how many are Indians?

MR. SHAFFER. Sixty.

MR. POWELL. Sixty? What percentage would that be? Point—It's mighty low.

MR. SHAFFER. It's very low.

MR. POWELL. Very, very low. Now, aren't there a number of positions in the highway department that the basic requirement would be physical fitness?

MR. SHAFFER. Quite a number of them are, yes, sir. Laborers. Equipment operators. Truck drivers. Things like that.

MR. POWELL. We don't have, then, the problem of written examinations and that sort of thing, do we?

MR. SHAFFER. No, sir. The only requirement, say, for equipment operators is the rating of their training in the operation of equipment. In other words, you don't want to put a man on a \$60,000 bulldozer that has never run one before. So it's based strictly on the job requirements and the man's application.

MR. POWELL. But there are a number of jobs which don't have such requirements, and I take it there are Indians who can drive such equipment?

MR. SHAFFER. Yes, sir. We have them.

MR. POWELL. What about those positions which don't call for these kinds of skills? Aren't there a number of laborer positions?

MR. SHAFFER. Yes, sir.

MR. POWELL. Why is it that we don't have more Indians employed by the State highway department?

MR. SHAFFER. There are several reasons. One of them is the concentration of Indians in the State. I believe you will find they are over here in the McKinley-San Juan Counties areas. And we have to have work to be able to put them to work.

MR. POWELL. Do you have any construction at the Dulce area?

MR. SHAFFER. Dulce?

MR. POWELL. Dulce area.

MR. SHAFFER. No. We have some maintenance patrols up there but that's all. And a patrol is composed of, say, five or six men. And in those depressed areas like that you don't have too high a rate of turnover. Jobs are pretty scarce.

MR. POWELL. That's a high concentrated area of Indians, isn't it?

MR. SHAFFER. Yes, sir.

MR. POWELL. Do you have any Indians employed in that area?

MR. SHAFFER. I can't tell from the report that I have here.

Making a quick check here, of the 60 Indians that we have on our payroll, 42 are in our District 3 area, which comprises Bernalillo County, Valencia County, and McKinley County, and Sandoval County. So the majority of them are in this area here.

MR. POWELL. In general, what are the qualifications for employment in the highway department?

MR. SHAFFER. I beg your pardon?

MR. POWELL. What are the qualifications for employment in the highway department?

MR. SHAFFER. For what type of position?

MR. POWELL. Well, for the various types— Well, what kind of positions? What are the major categories of positions that you have?

MR. SHAFFER. Well, the majority of our turnover is in the maintenance field, laborers, equipment operators, truck drivers, and things like that. Most of those, it's just like I say, a rating of training and experience.

When you get into the engineering and related technical, the lowest position we have is what we call an aide 1, an engineering aide 1, and that requires a high school diploma and passage of a State personnel board examination.

MR. POWELL. Let's come back to this. I want to come back to this. I'm told you are in the process of building a highway on or near Indian land in Dulce. Is that right?

MR. SHAFFER. I'm not sure of that, sir, no. And if we are, it would be shut down for the winter right now. It would be suspended for the winter. I'm not sure.

MR. POWELL. Well, our investigation indicates that there is such a road being built, and we'd be curious to know whether or not— Shouldn't Indians be hired on such a project?

MR. SHAFFER. I should believe so, yes, sir.

MR. POWELL. Getting back, you were talking about the maintenance. What are the qualifications for the other types of positions?

MR. SHAFFER. Well, we have our aide 1, which is the high school diploma and passage of the written examination. Aide 2, a high school diploma, 1 year experience, and passage of an examination.

MR. POWELL. Let me just understand you. You're beginning with a high school diploma. You mean to tell me there are no positions in the highway department which don't require a high school diploma?

MR. SHAFFER. Probably over half of our positions do not require high school diploma.

MR. POWELL. Let's talk about those positions then.

MR. SHAFFER. All right.

MR. POWELL. Do you get any Indian applications for those positions?

MR. SHAFFER. We are required to hire from registers provided by the State personnel office like all other State agencies are. Now, in a great many cases we ask the State personnel office for selective certification Indian because the job is in, say, Laguna, in the vicinity of Laguna Pueblo, or something like that, and—

MR. POWELL. Do you have an outreach program?

MR. SHAFFER. I beg your pardon?

MR. POWELL. Do you have an outreach program?

MR. SHAFFER. No, sir.

MR. POWELL. Don't you think perhaps you should in view of the low number of Indians? Is it possible to look into the question of whether or not Indians have to be, particularly for those positions which don't require a high school diploma, on a register?

It seems to me, why should we permit unrealistic requirements to exclude Indians from employment? And given the fact that so many of these positions just call for physical fitness, why is it that we point to these requirements—

MR. SHAFFER. One of the reasons for having a requirement of a high school diploma—

MR. POWELL. I'm talking about those positions which don't require a high school diploma.

MR. SHAFFER. They don't require a high school diploma. And the only requirement is some experience in that type of work and being placed from a register. Now, we have utilized the CEP program very well over the past several years. We take these people on and we train them.

MR. POWELL. In view of the small number of Indians you have, I don't know why you would say it has been very well. Such a small number of Indians. And there doesn't seem to be any higher number in those areas where you are working.

MR. SHAFFER. I would like to elaborate in this particular area, Mr. Powell. Since we went under the Federal EEO program in 1968, one of the first things that I did was contact all the tribal councils, pueblos, all minority groups for that matter, to encourage them to have their people apply through the State personnel office.

At the same time I contacted the State personnel office and asked that all advertisements for job openings be sent to the various tribal councils, pueblos, and other minority group organizations. As recently as last year I contacted Mr. Spath to ask him for any advice and assistance he could give me—

MR. POWELL. Mr. Sack?

MR. SHAFFER. Mr. Spath.

MR. POWELL. I see.

MR. SHAFFER. —working together in bettering our Indian program.

MR. POWELL. Do you think an outreach program might be helpful?

MR. SHAFFER. I imagine it would, yes, sir.

MR. POWELL. Do you think that you might look into that?

MR. SHAFFER. Yes, sir.

MR. POWELL. Mr. Spath, what are your duties as State personnel director?

MR. SPATH. I administer the provisions of the act and the policies of the State personnel board.

MR. POWELL. Of the total number of employees in the personnel department, how many are Indian?

MR. SPATH. Two.

MR. POWELL. Two? How many employees are there in the personnel office?

MR. SPATH. Sixty-two.

MR. POWELL. Sixty-two?

MR. SPATH. Yes.

MR. POWELL. To what do you attribute such a small number of Indians?

MR. SPATH. Those two have both been hired in the last year. And so, if you look at the turnover and the attrition and what we filled it with, I think that's pretty good if we continue to do that in the future. As to the small number in the past, I really couldn't express an opinion on that.

MR. POWELL. Tell me what is the responsibility, Mr. Spath, of State agencies in developing affirmative action plans in relationship to Indians?

MR. SPATH. At the time the agencies were provided the minority report, together with the requirement for affirmative action by the Governor, each agency was provided with a computer profile sheet on its agency showing how it stacked up, where its employees were by ethnic background, by salary, by education, etc., and they were advised to develop an affirmative action plan which would be responsive to the needs of their own agency.

So that could vary agency by agency. There would be nothing to preclude an agency from developing an affirmative action plan or a specific affirmative action item relating to a single minority group if that were identified as a problem of an agency as opposed to broadly.

MR. POWELL. Looking broadly at these State agencies, since there are so few Indians employed by these agencies, don't you think that each of them should have a particular component addressed to the problem of Indian employment?

MR. SPATH. Yes, I would think that this should be specifically spoken to in the plan.

MR. POWELL. And the State human rights commission in monitoring these programs would look particularly to such items, would it not?

MR. SPATH. Yes.

MR. POWELL. And you would advise that they do?

MR. SPATH. Yes.

COMMISSIONER MITCHELL. John, may I?

MR. POWELL. Yes.

COMMISSIONER MITCHELL. Mr. Spath, what you're saying is that there is an affirmative action program, that essentially you are its custodian or operator, and that you advise State agencies of their profiles for use under such affirmative action program. Is that correct?

MR. SPATH. That's true.

COMMISSIONER MITCHELL. Now, have you had an acknowledgment from every State agency that they have an affirmative action program?

MR. SPATH. No, there are still about seven or eight State agencies that do not have a plan.

COMMISSIONER MITCHELL. When did you announce the plan?

MR. SPATH. The letter and the report went out in February or March of 1972.

COMMISSIONER MITCHELL. So this is now November.

MR. SPATH. Yes.

COMMISSIONER MITCHELL. So from February to November in one year some State agencies have just simply ignored or not even acknowledged receipt from you of an affirmative action program requirement?

MR. SPATH. That's true.

COMMISSIONER MITCHELL. Would you identify those agencies?

MR. SPATH. I don't have those agencies with me.

COMMISSIONER MITCHELL. Well, how about the department of forestry?

MR. SPATH. The department of forestry has a plan.

COMMISSIONER MITCHELL. It does have a plan?

MR. SPATH. It does have a plan.

COMMISSIONER MITCHELL. How about the secretary of state's office?

MR. SPATH. I don't believe the secretary of state's office does have a plan.

COMMISSIONER MITCHELL. How about the library, State library system?

MR. SPATH. I'm not sure. We have followed up with all of those that don't have plans on two occasions.

COMMISSIONER MITCHELL. And they still have not gotten back to you?

MR. SPATH. They still have not finalized their plans. That's true.

COMMISSIONER MITCHELL. And what action do you propose to take about this?

MR. SPATH. At this point it's the place where the Governor will just have to tell them to develop a plan, you know, in person.

COMMISSIONER MITCHELL. Do you advise the Governor you haven't heard from them?

MR. SPATH. Yes, the Governor knows the agencies that have not responded to the plan request.

COMMISSIONER MITCHELL. You know, one of the things that

has concerned the Civil Rights Commission about revenue sharing has been the fear that States would be—that money would be coming back to the States under conditions where those tax funds were used either for overtly discriminatory practices or in programs and activities that did not conform with civil rights laws and affirmative action programs. And essentially what you're saying is that this State, although it has ordered agencies or instructed agencies to enact affirmative action programs within their units, that they have really not done so in some cases.

Now, this is just what we are afraid of. One of the few things the Civil Rights Commission can do to deal with this kind of situation is to recommend to the Federal Government that it either withhold funds or seriously consider the allocation or not allocating funds at the State level and elsewhere, where there is clear instance of either real discrimination, active programs of discrimination, deprivation of equal opportunity, accidentally or otherwise. And this seems to me to be a very good example of how the fears of the Commission may be realized.

What about the State police in New Mexico? Have they responded?

MR. SPATH. The State police have responded, and the State police does have an affirmative action plan. In this State the State police are under a separate merit system from the general merit system, and they administer their own, so there's no relationship between our office and theirs with regard to recruiting, with regard to referral of lists, and that type of thing.

COMMISSIONER MITCHELL. Is there some special reason for that?

MR. SPATH. I'm not sure what the historical reasons for that are.

COMMISSIONER MITCHELL. Have you any idea of the racial composition of the State police in New Mexico?

MR. SPATH. I looked at it at the time the report came in, but I don't have those figures with me.

COMMISSIONER MITCHELL. Do you know whether or not they have an affirmative action program?

MR. SPATH. They do have an affirmative action plan. I'm not acquainted with the program.

COMMISSIONER MITCHELL. Will you distinguish between a plan and a program? Mr. Urioste said he had a plan—

MR. SPATH. Yes.

COMMISSIONER MITCHELL. —but he doesn't have a program.

Are you suggesting that it's possible to write out a plan and not bother with a program?

MR. SPATH. Yes, I think that would be a possibility, but that's the reason why we wanted the plan to be written in such a way that it had affirmative steps that dealt with specific problems, and then there be someone to follow up on periodic evaluation to make sure the plan, in effect, is carried out because it would be possible to have a plan without having a program.

COMMISSIONER MITCHELL. But I'm correct in my assumption that in February you advised some State agencies of the need—

MR. SPATH. All State agencies.

COMMISSIONER MITCHELL. All State agencies. —and that as of November 15 some State agencies have yet to respond to that request?

MR. SPATH. That's true.

COMMISSIONER MITCHELL. Thank you.

MR. BUGGS. I wonder if I might ask a couple of questions?

MR. POWELL. Yes. Mr. Avena had one question. Go ahead.

MR. BUGGS. Mr. Spath, do you have an affirmative action plan for the State personnel office?

MR. SPATH. Yes, we do.

MR. BUGGS. Have you provided a pattern, an example of the kind of plan that State agencies should send to you?

MR. SPATH. Yes. With the original plan that was submitted by the Governor to agencies, it had a sample plan attached. But it indicated that it was just a sample because you have to draw your plan to meet your needs as described by the information which was furnished you.

MR. BUGGS. Mr. Urioste has indicated, and I suppose this is common to most State agencies, that the State personnel board provides all of the names and qualifications of individuals who will be hired by them. Does this then mean that, if Mr. Urioste does not have any American Indians or if the State highway department has so few, that the State personnel board then bears the major responsibility for not having such persons on the list from which they can take them?

MR. SPATH. It could mean that there are fewer Indians available for certification than for other groups. We share the view that agencies and the State personnel board share the responsibility for outreach because the agencies do it if they have other special needs. For example, if their neighbor comes to them and asks how do you get a job, they counsel them. If they're looking for engineers and they can't find any, they go to the colleges themselves.

So our view would be that, true, while people apply through us and we administer the system, that agencies have a shared role with us on outreach and reaching candidates in order to get people on lists.

MR. BUGGS. But, then, do you insist that they exercise that outreach program? Do you demand that they do it?

MR. SPATH. We haven't probably to the degree that we should.

MR. BUGGS. I'm a little concerned—not concerned—but could you explain to me what the relationship in terms of the responsibility is between your board or your operation as personnel director and the human rights commission in terms of, in a sense, riding herd on the extent to which fair employment practices are implemented by the State?

MR. SPATH. All right. Initially, because of the access of information and we had the staff available, the Governor requested that we actually do the initial report to develop a computer program where we could keep track of both progress and numbers and promotions and extra merit increases and all these type of things by minority groups. And you must recognize that that had never been done before—before the report was issued last year.

At that point there was a discussion on whose role it should be to see that the plans which the agencies established were carried out. And we had joint meetings with the human rights commission and ourselves and the Governor.

It was the feeling of the Commission—and I could understand their feeling—that the thing should be administered by someone other than personnel [board] because many of the problems were in a sense our problems, and that someone else should take a look and that we shouldn't, in effect, be assessing our own system. And so we were agreeable to that.

So when the letter went to the agencies, it indicated that our role would essentially be this: maintaining the data, periodically providing the agencies data so they knew where they stood to start and what progress they had made, and assisting the human rights commission on training people in equal employment opportunity and arranging for workshops and, where possible, arranging for federally-funded programs to assist us in that endeavor if there were no funds. But from that point on that the action with regard to specific agency plans would be human rights commission, but that the action with regard both to our own plan for our internal staff and affirmative action statewide in the sense of the things that the board had the responsibility to be responsive to, such as selective certification, preferential certification, working with

agencies to test validity, making sure that the standards required for jobs were realistic as to what was needed, those type of things that really is our business, that we would have the responsibility to get those things in order.

MR. BUGGS. Was there some discussion at the time these decisions were made that the human rights commission would assume the responsibility for monitoring the effectiveness of the program and the effectiveness of the affirmative action plan and program?

MR. SPATH. Yes.

MR. BUGGS. Was there some discussion as to the fact that they did not have the manpower to do that?

MR. SPATH. Yes. I don't believe it was as noticeable in the beginning in our discussion as later. And the human rights commission director came to me later, you know, and he said, "This is a bigger job than what we originally anticipated because these plans are coming in like mad, and as we view our priorities we have so many days on discrimination complaints and hearings and those types of things." And they were established by statute. So that he said that, "We don't have the staff to really effectively carry out that role."

At that time we did provide some assistance to him in agencies that had not yet developed plans on assisting them with plans as he had done, but from the standpoint of someone going to check whether the plan had been carried out and evaluated, I really doubt if that has been done.

But I think he's here and he would know what has been done in that phase.

I do know that in some cases he did bring to the Governor's attention plans that he felt were ineffective and not responsive to the Governor's request.

COMMISSIONER RANKIN. I believe that Mr. Avena has a question.

MR. AVENA. Mr. Buggs anticipated my question. It was a little confusing. On the one hand, you were saying that you had to go to the personnel register to get employees, and on the other hand you were saying that you have affirmative action programs in each agency. And I think that was a little confusing to me. This was the question that Mr. Buggs brought up.

Mr. Spath, I just wanted to ask one thing. You said 2 months ago you hired one Indian to travel around the reservations and try to get people into State government. Is that right?

MR. SPATH. Yes, sir.

MR. AVENA. And you say that you have problems keeping, or you had problems, keeping this Indian.

MR. SPATH. Well, we had one prior to that under a different program.

MR. AVENA. But you do have problems keeping one Indian?

MR. SPATH. Yes.

MR. AVENA. Did you ever think that maybe if you hired two you might have less problems, or three, or four, or five?

MR. SPATH. That's true. I think that the statement that was made by Mr. Rankin points that out—that one reason I think that it's so obvious to us when the Indian leaves—and it's generally to go back to help his people, to work with the tribe, and so forth, and we understand that—that I think that one reason it's more noticeable is because you see the one Indian or the two Indians you have go and it isn't as obvious in the other case.

MR. POWELL. I think the point here is, Mr. Spath, that you want to avoid— You have to overcome this image—

MR. SPATH. Yes.

MR. POWELL. —you have with Indians of just hiring a “token Indian.” You don't hire just a token Indian. You hire as many Indians as you can to encourage them to come on and apply to State agencies.

MR. SPATH. Yes.

MR. POWELL. Minority people don't apply to places where they think they are going to be turned down or turned off. And that's a problem that you face here. I think that's what Mr. Avena is addressing.

MR. SPATH. And we agree with that. In fact, that was one point that we made with the Indian that we presently have making the tour—is that this is a “chance you have to help us and to help your people.” And that's really the challenge that he took on where he could make meaningful change and get jobs for Indians, and that's what we wanted.

MR. BUGGS. Mr. Powell, just one more question.

MR. POWELL. I have no more questions.

MR. BUGGS. Mr. Spath, some agencies, private as well as public, have taken the position that where they know that there are minority group people who are qualified, such as, for example, laborers— I don't think there could be any question but what the State highway department could find Indian laborers and that the State personnel board could get them on the list if they looked hard enough.

Now, some agencies have taken the position that, “We'll not permit you to hire anyone until such time as you hire, for example, an American Indian as a laborer.” In fact, the Supreme Court in connection with an Alabama case involving State police have indicated that the State of Alabama must hire 25 percent minority group people on their force, or one out

of every four has to be a minority group person.

Now, would it be inconceivable that your State personnel board could take a position that in terms of some jobs where you absolutely know that Indians are available—you know there's 58 percent unemployment in some of the pueblos—that they could say to the State highway commissioner, "You may not hire one single laborer until such time as you hire X number of Indians"?

MR. SPATH. That would be a policy matter that the board would have to decide. We could administer it if they decided that.

With regard to laborers, since you specifically mentioned that, see, we do have a class called utility workers that is used for that purpose by highway and all other agencies. There's no list. Those agencies on that level, they hire people, they rate them, they rank them, and they put them on themselves.

So it's not just like it appears. Because on those low-level jobs the agency actually has the responsibility to seek out and to recruit and to look and to put people on the rolls themselves.

Now, not above that level. But, in other words, an agency like highway can do outreach. They can put the Indians right on themselves.

For example, mention was made on Indian lands, a highway going near or through Indian lands. I think in the past availability has been a problem, and that's part of our problem in that I don't think our outreach has been as effective as it should be.

Our vacancy notices haven't been to the right place. The Indians, as a rule, haven't been as quick to use the services of the employment service commission as others might be. And I think that's one area where we have to make a major improvement to make sure that they know that jobs are available.

And that's one of the purposes of this outreach. And, for example, on his first trip he came back with 15 applications of Indians. That may not sound like many, but that's better than none. And we viewed that and, as agencies say to me, you know, "There aren't Indians on lists," well, I'm going to see there are Indians on the lists, and then we'll see what the agencies do.

MR. BUGGS. Maybe this question should have been directed to Mr. Powell who is chairman of that personnel board. Could you make such a requirement, Mr. Powell?

MR. POWELL. I'm not sure, Mr. Buggs. We certainly can check this. I'm not sure because of the wording of the act itself which says "equal employment opportunity." Now, perhaps in

the context you're mentioning, the example you gave, it would be possible, and it's certainly something we would consider very seriously. We have not thought about it to this point.

MR. BUGGS. Mr. Shaffer, since you have the responsibility for hiring laborers and you say quite a number of your jobs are of that nature, could you not require your personnel, the people that do the hiring out in the field—

MR. SHAFFER. Oh, we—

MR. BUGGS. —not to hire anybody until they hired some Indians?

MR. SHAFFER. Yes. In fact, we have had to do this on a number of occasions. Last year we had a highway construction project in the vicinity of Crown Point. We couldn't get anybody from the personnel roster or the register that was willing to move to Crown Point to work on highway construction. We couldn't get any Indians on the list of eligibles. So we went into the Crown Point area and we hired laborers and put them doing this same type of work.

We have had very good luck, but there are a lot of areas in the State where you can't move an Indian to. For example, it isn't practical to try to hire an Indian off the Navajo Reservation and send him to Roswell. He would have to rent a house, pay gas, lights and water, transportation, and so forth like that.

This is one of the problems that we do have, that the Indians are concentrated in certain areas of the State and there are a lot of areas in the State where there are no Indians, there are no blacks, no Asians.

MR. BUGGS. But I imagine that all of you gentlemen would agree that 58 Indians in the highway department—

MR. SHAFFER. Sixty now.

MR. BUGGS. Sixty? Great. Three in motor transportation and 46 in health and social services is a pretty bad record. And I'm also interested about that 46. And you got 30 this year. Does that mean that you only had 16 during the whole history? That the 16 is the highest number you had prior to this year, Mr. Heim?

MR. HEIM. No, because I don't think that figure takes into consideration attrition.

MR. BUGGS. I mean at any one time. Sixteen at any one time.

MR. HEIM. I'm sorry. What is the question again?

MR. BUGGS. Prior to this year was 16, since you hired 30 this year, which means that you have 48 Indians now, prior to this year was the number 16 the highest number of Indians—

MR. HEIM. No, that—

MR. BUGGS. What was the highest you had at any one time?

MR. HEIM. No.

MR. BUGGS. What was the highest at any one time?

MR. HEIM. I think that figure that is represented on that chart there represents the number of Indians on the rolls as of December 31 of last year.

MR. BUGGS. December 31 of last year?

MR. HEIM. Yes. I think the information we have as of September 30th of this year is that we have 59 employed.

MR. BUGGS. So you have gotten 13 since December of last year?

MR. HEIM. Thirteen net gain. But we actually hired 30.

MR. BUGGS. I see. How come you were able to hire so many in a year when all of the other times you had not gotten but up to 46 after how many years has this department been in existence? Twenty years? Thirty years?

MR. HEIM. Well, it's a merger department. It merged the old department of public welfare, which I don't know when it started, and the department of public health. Also I'm not familiar when it started. I have been with the department for 21 months.

As I indicated earlier, I think we did make a determined effort early this year in cooperation with the Bureau of Indian Affairs to make known to Indian tribes and to the pueblos that we had job opportunities in the department and that we were interested in Indians applying and getting qualified for them.

MR. BUGGS. Thank you.

COMMISSIONER RANKIN. Commissioner Mitchell?

COMMISSIONER MITCHELL. Mr. Heim, just to make sure I understand your department's functions, when you say you are director of health for the State, what does that mean? Do you operate the State hospitals?

MR. HEIM. No.

COMMISSIONER MITCHELL. Who does, by the way, if you don't?

MR. HEIM. That is the department of hospitals and institutions. It is a separate department of the State government.

COMMISSIONER MITCHELL. Do you operate any kind of clinic services?

MR. HEIM. Not— Through our public health county offices, yes. I mean, we do have a number of clinic services providing immunizations, V.D. clinics, family planning clinics, and the like.

COMMISSIONER MITCHELL. Is that the majority of the health work that you do or is there a major aspect of it I'm not asking

you about?

MR. HEIM. Our health agency combines preventive medicine, the operation of the district and county health departments—health offices, rather—the crippled children's services, and comprehensive health planning.

COMMISSIONER MITCHELL. Do you provide any health services to Indians?

MR. HEIM. Yes, we do.

COMMISSIONER MITCHELL. Have you seen the study— We had two nurses who testified here yesterday they had made a study about the relationships between people who provide medical services and Indians who receive them. Have you seen that study?

MR. HEIM. No, I have not.

COMMISSIONER MITCHELL. Are you familiar with it? Have you heard of it? Do you know about it?

MR. HEIM. No, I am not.

COMMISSIONER MITCHELL. What are your qualifications for this job now? Are you a doctor?

MR. HEIM. No.

COMMISSIONER MITCHELL. Are you a public health-trained individual?

MR. HEIM. No, I am a public administrator.

COMMISSIONER MITCHELL. Where did you get your training?

MR. HEIM. Well, I have worked in all levels of government. I have worked in private industry.

COMMISSIONER MITCHELL. Were you trained at a university as a public administrator for this kind of work?

MR. HEIM. Not specifically for this kind of work.

COMMISSIONER MITCHELL. Your qualifications are those of an administrator who can run an organization?

MR. HEIM. That's correct.

COMMISSIONER MITCHELL. Did you say you did or did not perform health services for Indians?

MR. HEIM. We do.

COMMISSIONER MITCHELL. Under what arrangements?

MR. HEIM. We perform services for them in the same way that we do for the general population, through our health clinics out in the field.

COMMISSIONER MITCHELL. Did you hear any of the testimony we heard about health services?

MR. HEIM. I was not here yesterday. I did not hear it.

COMMISSIONER MITCHELL. Well, I would hope that you would familiarize yourself with that. Are you aware of complaints or general feelings of Indians that health services available to

them are unsatisfactory?

MR. HEIM. Yes, in a general sort of way. Most of the health services on reservations are performed—in fact, I think almost all of them are performed—by the Indian Health Service of the Department of Health, Education, and Welfare.

COMMISSIONER MITCHELL. What percentage of your health services to the people of this State would you say are performed for Indians?

MR. HEIM. We have no data on that.

COMMISSIONER MITCHELL. You don't ask—keep any records?

MR. HEIM. No, we do not ask for any ethnic information when a person presents himself for services.

COMMISSIONER MITCHELL. Now, tell me about social services. Is that welfare?

MR. HEIM. Yes.

COMMISSIONER MITCHELL. You administer welfare?

MR. HEIM. Yes, we do.

COMMISSIONER MITCHELL. You deliver the welfare check or you validate—

MR. HEIM. Yes.

COMMISSIONER MITCHELL. —eligibility?

MR. HEIM. The welfare end is handled through two agencies, the public assistance agency, which is actually the income maintenance part of welfare, and the other is a social services agency which delivers social services.

Now, we do that both directly and through contract. We do have four contracts for social services with Indian tribes. We have a contract for day care and child development with the Mescalero Apaches. We have a contract for child care and development with the Zuni Tribe. We have a contract for day care and child development with the Jicarilla Apache Tribe. And we have a contract with the Navajo Tribe for social and educational services.

These contracts with the Indian tribes represent 44 percent of all of the social services contracts which we have, in fact, in the State.

COMMISSIONER MITCHELL. And you perform those services at the pueblo level?

MR. HEIM. Yes.

COMMISSIONER MITCHELL. And who is employed to perform them? Are Indians employed?

MR. HEIM. Yes. Our contract is with the tribe.

COMMISSIONER MITCHELL. No, but I mean who does the work? Do you employ Indians in the execution of those contracts?

MR. HEIM. Well, we serve in a contractor relationship where the tribe itself performs the work.

Now, in two of the contracts, the contracts with the Mescalero and the Jicarillas, we have a provision in the contract which states that maximum opportunity for employment will be afforded low-income tribal members through appropriate outreach and selection mechanisms determined by the tribe.

COMMISSIONER MITCHELL. And the other two?

MR. HEIM. The other two have the standard equal employment hiring provision.

COMMISSIONER MITCHELL. Thank you.

COMMISSIONER RANKIN. Mr. Powell?

MR. RAY POWELL. Mr. Chairman, I believe I inadvertently talked us past a question that Mr. Powell asked earlier. It may not be pertinent now, but I didn't want to leave a hole in the testimony.

As I recall the question, it was something to the effect: What has been done or should be done to improve the Indian employment situation? Mr. Spath was going to talk to that, and I answered a question from Mr. Mitchell and lost trail.

COMMISSIONER RANKIN. I'm going to ask this question just a little bit later. I want to summarize right now if I can, because we are running overtime again. I think you gentlemen have showed us a disturbing picture of the employment of Indians by the State of New Mexico. It worries us a lot. We know what the solution is maybe 50 or 100 years from now, but the immediate easement of this problem is a difficult matter.

You have pointed out, it seems to me, how certain programs are not working too well, how the outreach program is not doing too well, the affirmative action program, that not only have some agencies not even documented plans, they have no program whatsoever. And this worries us a great deal that the State has not complied with some of these programs.

Now, have we missed any possible suggestion that you might like to give us as to how this situation can be improved? Do any of you have any suggestion before we leave this matter here as far as you are concerned? Do you have any other possible solution that you could give us that might improve the present situation that you have given this testimony about?

Mr. Powell?

MR. RAY POWELL. Commissioner Rankin, a general comment that I think might be helpful, and then perhaps Mr. Spath could speak to the more specific points.

COMMISSIONER RANKIN. Yes.

MR. RAY POWELL. I think in the State of New Mexico local

educational units might do more to help prepare the Indian young people for employment.

Here in Bernalillo County we are fortunate in having a very good technical vocational institute which has helped in the skilled areas. We also have an independent university, the University of Albuquerque, that has a very strong element of its program in recruiting Indian students and helping them prepare for careers at the associate two-year level and at the four-year bachelor level. I'm sure other parts of the State that I'm not familiar with may have such programs.

But our experience here is that this is a necessary complement to the educational programs sponsored by the BIA.

COMMISSIONER RANKIN. Thank you.

MR. SPATH. In summary, if I could just mention two or three things: One, we know we have to do a better outreach job—

COMMISSIONER RANKIN. Yes.

MR. SPATH. —both in numbers and in quality.

We have to have better communication with the Indians so they know about jobs available because apparently the sources and the individuals and the methods that we have used haven't worked.

We will have to follow up on the EEO plans to assure that the Governor gives the agencies the word that he means business.

And we have to continue our efforts in test validation, because that one is really key, and the relationship of tests and rating and ranking schemes to jobs.

And then, last and not least, we do have to look at the standards for all the jobs to make sure that the standards are realistic.

And those are things that are underway.

COMMISSIONER RANKIN. Thank you.

Any other comments?

[No response.]

If not, you gentlemen agree that you are going to try to do this and to improve the situation to the best of your ability?

MR. RAY POWELL. Yes, sir.

COMMISSIONER RANKIN. Thank you for coming here to testify and answer our questions. Thank you very much.

We will now have a 10-minute recess.

[Whereupon, a recess was taken.]

COMMISSIONER RANKIN. I ask the hearing to come to order. I would like Mr. Louis Bachicha and Mr. Theodore Shuster to come to the witness stand.

Would you remain standing to take the oath?

[Whereupon, Mr. Louis Bachicha and Mr. Theodore Shuster were sworn by Commissioner Rankin and testified as follows:]

TESTIMONY OF MR. LOUIS BACHICHA, CHAIRMAN, EXECUTIVE DIRECTOR, EMPLOYMENT SECURITY COMMISSION, STATE OF NEW MEXICO, AND MR. THEODORE SHUSTER, DIRECTOR FOR MANPOWER

COMMISSIONER RANKIN. Will you take your seats?

Mr. Powell.

MR. POWELL. Would you each please state your name, address, and position for the record?

MR. BACHICHA. My name is Louis R. Bachicha. I am the Chairman, Executive Director of the Employment Security Commission of New Mexico.

MR. SHUSTER. I am Ted Shuster. I am Director for Manpower and I don't have a street address but my mailing address is Star Route, Box 191-AB, Alameda, New Mexico.

MR. POWELL. Mr. Bachicha, you are appointed by the Governor? Is that correct?

MR. BACHICHA. Yes, sir.

MR. POWELL. Would you briefly define the authority by which the employment security commission was created? What its function is?

MR. BACHICHA. The employment security commission was created back in 1937 under the Wagner-Pizer Act, and it is comprised of three commissioners. We have an employer member, an employee member, and a public member. And I'm the public member of the commission. And this is a unique commission in that the chairman of the commission also serves as executive director of the agency, which is a paid full-time position.

The major responsibilities of the commission are to administer the Unemployment Insurance Act and to administer the employment service and manpower programs.

MR. POWELL. How is this function carried out, particularly with respect to the employment service aspect as opposed to the unemployment insurance aspect?

MR. BACHICHA. The employment service aspect, we have a director of manpower and two assistant directors, one for field operations and one for staff operations, and then we have different divisions that— Have you got an organizational chart there?

MR. SHUSTER. Yes.

MR. BACHICHA. We have the different divisions within the manpower department and we have special programs—

MR. POWELL. Perhaps you ought to spell out what the employment service aspect is. What do you mean by that?

MR. BACHICHA. In the employment service we have 26 local offices. Their primary responsibility— They report to the director of manpower, and their primary responsibility is— We have people out in the field that work with the employers to what we call do employer relations work. And they contact employers to get them to list their job openings with the local employment service office.

And then we have placement. We have interviewers in our placement divisions, and counselors, and these people. When the job applicant comes to that particular employment office, they interview the individual and try to match him to a particular job. And if they feel that he does meet those qualifications, then they refer him to the employer.

MR. POWELL. In carrying out your function, you receive Federal funds? Isn't that correct?

MR. BACHICHA. The agency is 100 percent funded by the Federal Government, yes.

MR. POWELL. Your program has as one of its requirements equal employment opportunities? Is that correct?

MR. BACHICHA. Yes, sir.

MR. POWELL. Prohibits discrimination?

MR. BACHICHA. When our plan of service is prepared, they require us to have a certain number of minority ethnic groups represented in the plan. And right now we have a total—

MR. POWELL. A certain amount of minority—

MR. BACHICHA. I mean a certain number of minority groups, you know. Right now, like blacks, you know, we have—

MR. POWELL. Wait a minute. Certain number of minority groups represented in what?

MR. BACHICHA. In the makeup of the commission, you know, in the employees. And right now we have—as of 11/14 we had 686 employees. We have 38 Indian Americans, 16 blacks, 345 Spanish, and 286 Anglo, for a total of 686 employees.

MR. POWELL. Okay. Let's come back to that. I take it that with respect to the public service aspect, the employment service aspect of your function, that is to say, in getting prospective employees to openings and seeing to it that equal opportunity is afforded to respective minority employees—particularly now we're focusing on Indian prospective employees—it is your responsibility to see that that is carried out? Is

that correct?

MR. BACHICHA. Our responsibility is to refer people to the—

MR. POWELL. No—

MR. BACHICHA. —to the employers.

MR. POWELL. No, no—

MR. BACHICHA. You mean to—

MR. POWELL. No, in carrying out this function, you as executive director have the responsibility to see to it that it's carried out?

MR. BACHICHA. Yes, sir.

MR. POWELL. People under you perform that function, but it's your responsibility to see that it is carried out? Is that correct?

MR. BACHICHA. Correct.

MR. POWELL. All right. We have heard a lot of testimony, most notably from Mr. Weahkee, and we have heard testimony from other people, that there is a very little success in referring Indians to private employers.

We have also had testimony that you received Federal funds to enhance your own employment picture—that is to say, to have Indian staff who by virtue of the fact that they are Indian and by virtue of the fact they are sensitive to the Indian problems and can speak the language— You have had Federal funds to get people on your staff and you have had very little success in this regard.

Would you care to address yourself to these two problems?

MR. BACHICHA. Well, first, in getting people in the agency itself?

MR. POWELL. The problem of getting Indians in the agency so you can perform the function of getting Indians into private employment. And the problem of getting Indians into private employment. You have had very little success in view of the Federal funds and in view of the Federal comments in achieving either one of these objectives.

MR. BACHICHA. Now, during the last few years we have referred—placed—approximately 35,000 men, women, and youth in jobs, and approximately two-thirds of this were different individuals. Of these individuals placed, 9.4 percent of them were Indians in fiscal 1972.

MR. POWELL. Fiscal 1972, 9.4 percent?

MR. BACHICHA. 9.4 percent.

MR. POWELL. Of the people placed in private industry?

MR. BACHICHA. Yes, sir.

MR. POWELL. How does that compare— That is the 1972 performance?

MR. BACHICHA. That's in fiscal 1972.

MR. POWELL. Have those statistics been made available to the Commission?

MR. BACHICHA. Pardon?

MR. POWELL. Have those statistics been made available to the Commission?

MR. BACHICHA. I have this written statement here that I'd be glad to leave with the Commission.

MR. POWELL. I'd very much like it.

MR. BACHICHA. All right.

MR. POWELL. I would like to know what your performance was in 1971 in that regard and the 5 years prior.

MR. BACHICHA. Sir, I don't have the figures for 1971.

MR. POWELL. Could you make these figures available to us?

MR. BACHICHA. Yes, sir. I'd be most happy to get the figures and send them to you, to the Commission.

MR. POWELL. Let me see if I understand your figures; 35,000—

MR. BACHICHA. Out of 35,000 individuals placed in jobs, approximately, of these individuals placed, 9.4 percent of them were Indians in fiscal year 1972.

MR. POWELL. And that 9.4 percent average figure represents how many numbers? How many people? How many Indians? Would that be 3,400? Something like that?

MR. BACHICHA. That would represent 15,054—no, 1,554.

MR. SHUSTER. 1,554.

MR. POWELL. 1,554 Indians were placed in jobs in 1972? Let me make sure we understand each other now. We are not talking merely about people who are referred? We are talking about people who were referred and got jobs? Is that right?

MR. BACHICHA. We are talking about people that actually got jobs, that were placed in jobs.

MR. POWELL. 1,554 Indians were placed in jobs in 1972?

MR. BACHICHA. According to our figures, yes, sir.

MR. SHUSTER. Different Indians.

MR. POWELL. Yet that would seem to be a reasonably effective effort, yet statistics show that Indians—that their unemployment rate on pueblos is 58 percent and that Indians are not employed in numbers that one would expect from their population.

If you were placing Indians at the rate of 9.4 percent or 10 percent over a number of years, that picture would have changed, wouldn't it?

MR. BACHICHA. I didn't say over a number of years. I mentioned that this is for FY '72. I was appointed to the

commission January 1, 1972, by the Governor, and since that time we have made— You know, prior to— Right after World War II, the Department of Labor had placed major emphasis in training individuals and so forth.

MR. POWELL. Do you have a copy of that—

MR. BACHICHA. And now after this last year we are changing our emphasis into servicing the employer and to get the employer to list the jobs with the local employment office, and that is a national effort, and the President has issued Executive Order 11598 directing all civil service—the Civil Service Commission—I believe you're familiar with that Executive order—directing the contractors doing business with the Federal Government to list their jobs with the employment service. So the emphasis has been shifted over to placements.

MR. POWELL. Well, this business of getting employers to list their openings, that was new? Is that what you're saying?

MR. BACHICHA. No, it wasn't new, but there is more emphasis placed in that area than what there was before.

MR. POWELL. May I see a copy of that statement that you have? Would one of the clerks bring it up? Mr. Chavez?

[Mr. Bachicha produced a copy of the document referred to.]

MR. POWELL. Mr. Chairman, can we enter this into the record? I'd like to refer to it now.

COMMISSIONER RANKIN. Yes. I authorize it be submitted and be included in the record.

[Whereupon, the document referred to was marked as Exhibit No. 11 and received in evidence.]

MR. POWELL. I understand that your appointment on January 1, 1972, was a second appointment?

MR. BACHICHA. 1971.

MR. POWELL. That was your second appointment?

MR. BACHICHA. No, that was my first appointment to fill an unexpired term, and then I was appointed in February of 1972 for a 6-year term and confirmed by the State Senate.

MR. POWELL. So you have been in your present position since January 1, 1971?

MR. BACHICHA. Since January 1, 1971, yes, sir.

MR. POWELL. I see. Let's go on to Mr. Shuster for a moment.

Mr. Shuster, would you briefly state your responsibilities as director of the manpower program?

MR. SHUSTER. Well, as brief as I can be, I administer the employment service program and the manpower employability development portions of the current program as financed by the Federal Government, which includes the training programs.

MR. POWELL. What type of employment program does the commission administer?

MR. SHUSTER. Well, in many ways Mr. Bachicha has already described it. We have a number of local offices scattered throughout the State, including—

MR. POWELL. I see. How many programs are there?

MR. SHUSTER. Well, it all depends on how you figure them. I could make a guess and I have not really counted them up, but there's quite a few of them.

There's MDTA [Manpower Development and Training Act]. The Concentrated Employment Program. There's NAB's JOBS [National Alliance of Businessmen's Job Opportunities in the Business Sector]. There's Hitchhike. These are major programs.

COMMISSIONER RANKIN. Would you say 15? Approximately 15?

MR. SHUSTER. Well, you could say 15. There are probably 20 if you go down far enough. We have a program for registration of people who are drawing food stamps. It's not a very big one, but it still requires our attention.

COMMISSIONER RANKIN. Would you rather have it 25?

MR. SHUSTER. Well, it all depends on how far down you want to go, but there are certainly 15 good ones.

COMMISSIONER RANKIN. Okay. Thank you.

MR. BACHICHA. I think, Mr. Chairman, to answer that, I think that we have, supporting services and in cooperation with other agencies, approximately 47 different programs.

COMMISSIONER RANKIN. Forty-seven different programs?

MR. BACHICHA. Yes, sir.

COMMISSIONER RANKIN. Okay. Thank you.

MR. POWELL. Knowing that Indians constitute a significant number of unemployed, either Mr. Bachicha or Mr. Shuster, what programs are geared specifically for the Indian unemployment problem?

MR. BACHICHA. We have some manpower development—MDTA—programs that we administer in cooperation with the State department of education. And we have the certified employment program as Mr. Shuster stated earlier. These are programs—The certified employment program is geared primarily to the Indian community.

MR. POWELL. In view of the tremendously high unemployment rate among Indians in this State, particularly those on reservations, your programs are not having that much impact, are they?

MR. BACHICHA. The thing is on that, Mr. Powell, my figures

here from January to March 1972, averages, estimated civilian work force employed and unemployed by major racial ethnic group, New Mexico, it shows the work force, New Mexico, total, 391,900. White 260,500. Indian 15,700. For a total of unemployed percentage of 12.7 percent.

MR. POWELL. 12.7 percent statewide?

MR. BACHICHA. Statewide, yes, sir.

MR. POWELL. What about the unemployment rate for Indians, particularly Indians located on or near reservations?

MR. BACHICHA. We don't have a breakdown of that.

MR. POWELL. Well, the figures we have—

MR. BACHICHA. The figures I have are 12.7.

MR. POWELL. —are 60 percent on reservations.

MR. BACHICHA. Now, the thing is on that— Let me— I have a statement over here, the characteristics of unemployed civilian noninstitutional population. It shows over here the breakdown as—

MR. POWELL. Your information is not to the effect, is it, that there is not tremendously high unemployment on reservations?

MR. BACHICHA. It depends on what methodology is used in arriving at an unemployment figure in a given area. Now, as I understand it, the BIA projection is that the unemployment is— What? Sixty percent? But as I understand it, they include individuals that are not in school and— Well, let's see. I have some figures over here. Let's see.

On the total number of persons, the total labor force of 764, of those 532 were not in the labor market, and those were 211 males and 321 females.

As I understand it, the way the BIA makes a projection on the unemployment is they take youngsters over the age of 14 that are not in school and they figure people that are over the age of 65, and so forth, you know, and include housewives, and so forth. And we don't. Our figures do not include those individuals.

MR. POWELL. You are suggesting that BIA in counting unemployed includes children over 14?

MR. BACHICHA. People that are not in the job market. That's what I'm referring to.

MR. POWELL. Well, if you're talking about people not in the job market, I can address myself to that. But you say people over 65 and people under 18 are included in the unemployed for BIA figures?

MR. BACHICHA. That's what I understand. I'm not certain.

MR. POWELL. That would be very, very— You mean to say—

Let me just ask you this. You mean to say that an agency which has the responsibility to see to it that the Indians have equal education, equal employment opportunity is going to use statistics which would show that in meeting its goals it is doing a very poor job? Wouldn't that—

MR. BACHICHA. Our figures are not— You know, they are compiled from people that are actually in the job market.

MR. POWELL. Let's do this. Let's not speculate about what BIA does.

MR. BACHICHA. I'm not speculating, sir.

MR. POWELL. Well, you're not giving me firm information, are you, that BIA does in fact include in the unemployment rolls people over 65 and people who are under 18 who are not in school? That's not hard, firm information, is it?

The area director will be here later on this afternoon. I'll ask him this question. But let's not speculate on it now.

MR. BACHICHA. I'm not speculating. The thing is I'm giving you information which has been passed on to me by my director of research and statistics department which is the one that compiles this. They are the ones that compiled the unemployment figures.

MR. POWELL. Your director of research statistics? What's his name?

MR. BACHICHA. Robert Wells.

MR. POWELL. Mr. Wells?

MR. BACHICHA. Wells.

MR. POWELL. And he tells you—

MR. BACHICHA. He tells me that—

MR. POWELL. —that the figures—

MR. BACHICHA. Now, this— I asked him that specific question, and I said, "How come the BIA figures show," at that time I think it was, "57 or 58 percent unemployment?" And this is what he told me, the methodology that they use to arrive at that figure. So I'm just stating what the director, the chief, of that division told me.

MR. POWELL. Our investigation indicates that the overall unemployment rate for Indians living in the Albuquerque area in 1972 was 28 percent. For the Navajo area it was 44 percent. For the Phoenix area it was 36 percent. In contrast, the unemployment rate for New Mexico as a whole is 6.7 percent.

Do these figures seem reasonably accurate to you?

MR. BACHICHA. I don't have a breakdown of those figures. The figures that I have is a breakdown on the State—I mean the unemployment for the State and for the city of Albuquerque. And the city of Albuquerque, I don't have the breakdown

as to ethnic group.

MR. POWELL. I see. Mr. Bachicha, you administer, as I understand it, the private employment act. Is that right?

MR. BACHICHA. Public employment— The Emergency Employment Act?

MR. POWELL. No, the employment agency board.

MR. BACHICHA. No, sir. That's separate.

MR. POWELL. Would you explain that, what it is and what it does?

MR. BACHICHA. Pardon?

MR. POWELL. Would you explain that act, the Employment Agency Board Act?

MR. BACHICHA. The employment security commission has no control, has no connection with this board. It is administered by five members appointed by the Governor.

MR. POWELL. And what does that board do?

MR. BACHICHA. As I understand it, their primary responsibility is to regulate private employment agencies.

MR. POWELL. And, in other words, these private employment agencies are required to comply with State law? The do's and don'ts of these agencies are spelled out in the act? Is that right?

MR. BACHICHA. Yes, sir.

MR. POWELL. Now, does the State law prohibit discrimination by these private employment agencies?

MR. BACHICHA. I have my attorney here and I would like to ask him about the private employment agency act.

MR. POWELL. Our investigation reveals that the act doesn't address itself to discrimination at all. Is that correct, counsel?

MR. RICHARD BAUMGARTNER [Counsel]. That is correct. It does not address itself to discrimination.

MR. POWELL. If the State has a policy regarding equal employment opportunity, don't you think that in carrying out that policy and in regulating private employment agencies that the State law ought to specifically, explicitly require State employment agencies not to discriminate?

MR. BAUMGARTNER. Mr. Powell, I would agree with you completely and entirely, but, unfortunately, the fact of the matter is that the private employment regulatory act is virtually nothing more than a licensing act and it has no control provisions in it of any sort at all.

MR. POWELL. But yet if the employment agencies violate other requirements they can have their license revoked? Is that correct?

MR. BAUMGARTNER. If they violate specific provisions of the

act they can be denied a license, and they can have their license revoked in one area, as I recall, and that is overcharging certain fee conditions in the act.

MR. POWELL. So if the law prevented private employment agencies from discriminating on the basis of race, creed, or color and they violated that provision, their license could be also revoked? Isn't that true? Wouldn't this be an effective way of regulating private employment agencies and seeing to it that Indians had an equal employment opportunity?

MR. BAUMGARTNER. I believe it would be effective to put it into the act. As far as I can determine, the private employment agencies are subject to the Civil Rights Act as it currently exists.

MR. POWELL. Certainly.

MR. BAUMGARTNER. And the Human Rights Act, State Human Rights Act.

MR. POWELL. Are you talking about State?

MR. BAUMGARTNER. Both Federal and State. The Civil Rights Act and the State Human Rights Act have regulatory provisions concerning discrimination over private employment agencies.

It wouldn't hurt to spell it out.

COMMISSIONER MITCHELL. May we have this gentleman's name for the record?

MR. POWELL. Oh, yes.

MR. BAUMGARTNER. My name is Dick Baumgartner. I am counsel for the employment security commission.

MR. POWELL. You are appearing as counsel for the employment security commission? Fine.

Mr. Bachicha, does the commission have a viable affirmative action plan today?

MR. BACHICHA. We are in the process of getting— We are working with the EEOC [Equal Employment Opportunity Commission] Commission in getting an affirmative action program implemented.

MR. POWELL. Mr. Weahkee testified earlier about Federal funds that were provided to the employment security commission, the object being to increase your employment patterns particularly in terms of Indian employees. He indicated that you didn't succeed in getting the numbers of Indian employees as proposed by the plan. Some seven Indians were hired, when on one occasion it was 21 and another occasion, 29. Yet he said that, in looking at these problems and talking to people from your staff about those problems, that you never appeared at these meetings and the impression we had was that he didn't

think that you were particularly concerned or sufficiently concerned to address yourself in a personal way to the problem. Would you care to comment?

MR. BACHICHA. I was very concerned, and I did have representatives—someone representing me—at those meetings.

And what he is referring to, as I understand it, is an agreement that was reached with my predecessor whereby the U.S. Department of Labor at that time was funding, setting up, you know, a specific program, what they call Indian HRD, and when I came in I checked with the U.S. Department of Labor and they informed me that they were no longer funding that particular problem in this manner. And so they said that their emphasis was going to be placed in serving all minority groups and not just geared to one specific group.

MR. POWELL. Mr. Weahkee also indicated that there were certain components to that plan which involved an Indian file, how many Indian people were interested in getting jobs, which involved Indian interviewers, and that these things were not done after that plan was phased out.

Don't you think those kinds of techniques in view of the dearth of Indian employees should have been—

MR. BACHICHA. I would like to refer that question, Mr. Powell, to Mr. Shuster, if you don't mind.

MR. SHUSTER. Well, it depends on the area. In some places 90 percent of our files are Indians, like Gallup and perhaps a little bit less in Farmington. We have an active file from which applicants are taken when we have a job opening. And that has never been discontinued.

That was continued during all periods of the time that I—Well, since 1941 we have had an active file. All people who are actively seeking work, or as far as we know who are actively seeking work, have an application in that file, and from that is taken our— We make selections for the job openings that we have.

Recently, since July of this year, we have implemented the job information service which permits applicants who are job-ready or, in fact, any applicant who chooses to do so, to look through a job information service viewer to see all of the job openings that are available in the State as of that day. Because a new one is printed and distributed every day.

If he finds a job there he thinks he can do and has any evidence that he can do it, he is referred to the job if there are still places to refer. Because, in other words, if the employer says, "I want to talk to six people," and there are still less than six people referred, he gets the referral.

MR. POWELL. Is that information made available to tribes?

MR. SHUSTER. It could be if they wanted it. At present it's in Gallup and it's in Farmington and it's in every one of our offices.

MR. POWELL. It might be a good idea to make it available to tribes.

MR. SHUSTER. As a matter of fact, we do have a Hitchhike program that will be operative when a tribe is contracting from us to run their own employment service on the Navajo Reservation with a staff of 15, and they will have it.

MR. POWELL. Mr. Chairman, I have no further questions.

COMMISSIONER RANKIN. Commissioner Mitchell?

COMMISSIONER MITCHELL. Mr. Bachicha, earlier it was testified that you were invited to several meetings of Indians who were concerned about employment possibilities but that you have not gone to any of them. Was that accurate testimony?

MR. BACHICHA. Sir, that was with reference to the Indian HRD program.

COMMISSIONER MITCHELL. That's right.

MR. BACHICHA. I was invited to—what was it?—two meetings?—that they held. And I believe— I don't recall who the staff member—

MR. SHUSTER. Well, I have gone to every one that I have been invited to and some I guess that I wasn't invited I was there.

COMMISSIONER MITCHELL. Have you gone to some that Mr. Bachicha was invited to?

MR. SHUSTER. I suppose so because he may have had the invitation, but I did too and I went.

COMMISSIONER MITCHELL. You would have no reason not to go?

MR. BACHICHA. No, sir. See, in other words, sometimes I have a busy, very busy, schedule, and I have invitations to be at two or three different places. Therefore, I have to make arrangements and have members of my staff represent me at each one of those meetings.

But we do work with the Indian tribes and with the Pueblo Indians.

COMMISSIONER MITCHELL. From the testimony I heard earlier, I got the feeling that the people who testified felt that the funds that had been appropriated for Indian employment were not always spent for Indian employment, that they had been diverted. Is there any accuracy to that?

MR. BACHICHA. As I mentioned earlier to Mr. Powell's question, the funds were not appropriated, were not ear-

marked for that specific program. In other words, as I mentioned earlier, the Department of Labor stated that they had discontinued earmarking these funds and what they want us to do is to service all disadvantaged individuals in a given area.

And we have done this. We have in our various training programs— We have a certain percentage of blacks, certain percentage of Indians, and so forth. And so I think that we have followed the guidelines as set forth by the U.S. Department of Labor.

COMMISSIONER MITCHELL. Let me ask you one just general question which represents a feeling I am developing as I hear some of this testimony. What is being offered as evidence of availability of job opportunities to what the Commission has come to identify as minority citizens is in this area very heavily Spanish American.

MR. BACHICHA. Yes.

COMMISSIONER MITCHELL. Are you Spanish American?

MR. BACHICHA. Yes, sir.

COMMISSIONER MITCHELL. Do you consider yourself to be a member of a minority group?

MR. BACHICHA. I consider myself to be an American, period.

COMMISSIONER MITCHELL. Well, all right. That's maybe what I'm trying to say. Are you using Americans who are in heavy concentration in this area as an alternative to the normal kind of racial balance that the law requires in affirmative action or in minority-sensitive kinds of activities?

MR. BACHICHA. Commissioner, on this question, when I was appointed to this position the makeup of the commission was about 60 percent—is about 60 percent Spanish American. And you note that, as Mr. Spath testified earlier, that Spanish Americans comprise approximately 15— They have over 15 percent of the jobs over their—if you were to set a quota, you know—15 percent over that figure. And my opinion on that is that the reason for that is that the State capital is located in Santa Fe, and the majority of the people there are Spanish American.

COMMISSIONER MITCHELL. Thank you.

COMMISSIONER RANKIN. Mr. Buggs?

MR. BUGGS. Just a couple of questions.

Mr. Bachicha, 1,500 jobs that were provided to American Indians, I suppose in 1971-72 did you say?

MR. BACHICHA. 1971-72, yes, sir. Fiscal year.

MR. BUGGS. What kinds of jobs were those? Do you know?

MR. SHUSTER. I don't have that breakdown. We could get

them, I believe. I think I could. We have computerized the whole system, and I'm pretty sure I could get it for that period, but I'm not going to promise. I'll try if you really want to know.

MR. BUGGS. Could you provide that to us?

MR. SHUSTER. Well, I'll try. I don't know. See, we have tried to computerize— We have had all kinds of trouble with our computer in that kind of detailed output.

MR. BACHICHA. Mr. Buggs, we got a larger computer in November of last year, and we also went into the— On July 1 we went into this new job information service, and we have— I don't know if you are familiar with that new program.

It's sort of a TV viewer, you know, and we have microfiche, and we list all the jobs on this microfiche that are recorded, you know; like at the end of today we will get so many job orders, and those go down to the computer, and they are put into this microfiche. And then those are sent out the following day, and they go all over the State to all our local offices throughout the State by the following day.

So, you know, whenever you get a new system in, you always have some bugs, you know, that have to be ironed out.

MR. BUGGS. But you will try to be able to provide that information to us later?

MR. SHUSTER. Yes, if I can get the address of somebody who I can tell you about this, I'll do the best I can. If it's there you can sure have it.

MR. BUGGS. Fine. Just send it to the U.S. Commission on Civil Rights in Washington, D.C.

MR. SHUSTER. Okay.

MR. BUGGS. Another question. Mr. Bachicha, how did you discover that the Department of Labor had stopped earmarking those funds for the purpose of providing employment for American Indians in the employment security commission?

MR. BACHICHA. When the question was brought up, I checked to see if this was the case, and I indicated to Joe Arada who I had been communicating with, and so I did some checking on it, and I found that as I understood it, at the time the contention was they wanted 21 Indians, you know, on this program with the agency, and at that time we had around 44 or 45 Indians employed in the agency. So I checked with the Department of Labor, with the regional office in Dallas, and they informed me that this earmarking had been discontinued.

MR. BUGGS. Was that before or after or during the time that the \$230,000 referred to by Mr. Weahkee had been provided to the commission?

MR. BACHICHA. We don't know anything about the \$231,000,

sir.

MR. SHUSTER. Where did he get that figure?

MR. BACHICHA. Did he say where he got that figure?

MR. SHUSTER. I don't know what he means by that. There was money, of course, but how much I don't know.

MR. POWELL. There may have been some question about how much money, but there was no question that there was Federal money, substantial Federal money.

MR. SHUSTER. That's right.

MR. POWELL. Let's not worry about—

MR. BACHICHA. There are Federal funds, and what we do, we follow the guidelines as set forth by the U.S. Department of Labor. So if the U.S. Department of Labor say, you know, earmark a quarter of a million dollars for Indian programs, that's what that money will be used for.

MR. BUGGS. That's my question. Were the guidelines as indicated by Mr. Weahkee which required the 21 positions for a special purpose, I believe, not just to hire Indians but to hire Indians to do special kinds of things, in terms of providing opportunities for recruitment of other Indians— Were those guidelines changed after that money had been given to the employment security commission?

MR. BACHICHA. Sir, what year was he referring to? Do you know?

MR. BUGGS. John, do you know?

MR. POWELL. 1968, 1969.

MR. BACHICHA. That was prior to the time that I assumed the position of executive—

MR. POWELL. I gathered from his testimony those programs were in existence at the time you came into office and were phased out during the time you were in office. I take it what we're really addressing is—

COMMISSIONER MITCHELL. I have a question. Maybe this would help us get what we're looking for. You are presently employing how many Indians?

MR. BACHICHA. Thirty-eight right as of yesterday.

COMMISSIONER MITCHELL. All right. Now, are they being paid for—

MR. BACHICHA. And we have five vacancies in the Gallup area. We need a counselor in Gallup.

COMMISSIONER MITCHELL. Let's just take the 38. Are they being paid for entirely by you—

MR. BACHICHA. By Federal funds.

COMMISSIONER MITCHELL. —or are they being paid for by other programs?

MR. BACHICHA. No, by our agency—

COMMISSIONER MITCHELL. Its regular budget?

MR. BACHICHA. —from Title III funds and from contract monies.

MR. POWELL. They're all Federal funds.

COMMISSIONER MITCHELL. So these Indians you have are not being paid for directly by your agency but are under contract in a sense?

MR. BACHICHA. Some of them are under contract and others are under—are paid for from Title III funds.

COMMISSIONER MITCHELL. So that it is an accurate statement to say that you have Federal funds for the purpose of hiring Indians?

MR. BACHICHA. It is not an accurate statement, sir.

COMMISSIONER MITCHELL. Well, if you are—

MR. BACHICHA. Because in the employment service they don't give us positions, you know, as such. We go by many years. And in the plan of service they do not specify that we have a program for the black community and the State of New Mexico program for the Indian community, so forth.

COMMISSIONER MITCHELL. Do you have a contract with CEP for \$240,000?

MR. SHUSTER. Approximately that.

MR. BACHICHA. Approximately that.

COMMISSIONER MITCHELL. Does that cover six or seven employed Indians?

MR. SHUSTER. It depends. There's two contracts that we have that serve Indians, one in north central New Mexico and one on the Navajo Reservation.

COMMISSIONER MITCHELL. Mr. Chairman, the way for the Commission to have a look at this, I think, is to ask Mr. Bachicha and his staff to supply us with all contracts they have that cover the employment directly or indirectly of Indians in his department and put them in the record and study them.

COMMISSIONER RANKIN. Can you do that, Mr. Bachicha?

MR. BACHICHA. Yes, sir.

COMMISSIONER RANKIN. Thank you. I wish you would do that.

MR. POWELL. There were monies provided which called for 21 Indian positions. That's what Mr. Weahkee's testimony is. Is that testimony accurate?

MR. BACHICHA. Not during the period when I took over the agency to my knowledge. Prior to that there was—

MR. POWELL. And only seven Indians were employed. That is

accurate?

MR. SHUSTER. No, sir. That varied from time to time. Sometimes we had nearly the 21. And Bill ought to know this. Of course, he may not have had a chance to tell you that we did the best we could to fill it.

Now, then, the Indian HRD concept, the idea of having these people set aside in our local office to serve only Indians was really in many ways a hindrance to the Indian because those people felt that, well, that the Indians are being taken care of by those people. And that's contrary to all the instructions and all the policies that we give to our people. Everybody serves everybody, not just the people who are hired for Indians. If there is an Indian or a black man comes in, whoever is available serves him, not somebody who is hired to serve black people.

And that way if you were a little short you might not have anybody in there. And when you sent them out in the field you didn't have any Indian people hired under this program. But we had other people there who did the work.

MR. POWELL. Mr. Shuster, demonstrably the programs weren't working. So if the people who were supposed to serve everybody were not serving everybody but were serving everybody but Indians, it makes sense to get innovative programs and get Indians in there.

MR. SHUSTER. Let me tell you that in my opinion—and this is only an opinion and I'm not sure that Mr. Bachicha will agree with me—but in my opinion the CEP programs that are now serving Indians are doing an exceptional job for the simple reason that they are set up in a certain way with adequate resources. I mean employability development resources.

It does no good to register a man who has no skill if you're going to try to place him in a skilled job. And if you don't have the resources, then you have only fooled him and wasted your time.

But if you have got the resources which the CEP programs do have, in addition— Because they're not an open kind of a thing. They serve only a limited number. The Navajo CEP serves about 1,000 people a year, half of that in New Mexico, the rest in Arizona. And when they get that far they quit because that's all they have money for, but they do a good job with those people.

COMMISSIONER RANKIN. I hesitate to interrupt, but in addition to acting as chairman, I am a miserable timekeeper and we are about half an hour or more overtime. So I wish to thank Mr. Bachicha and Mr. Shuster for appearing before us and

giving us this information.

Thank you very much.

Before we hear from the next witnesses, there is something I want to tell you about just to let you have this information and also have it for the record. And that is, along with 2,000 other executive employees of the President, the members of the Commission on Civil Rights have been asked to resign their job. And I think you ought to know that.

And I assure you that just for my sake—and I'm going to let Commissioner Mitchell speak for himself—just as soon as I return to North Carolina and sit down at my desk, I plan to turn in my resignation because I serve at the pleasure of the President, and I recognize that he has this power and, if he wants to use it, that is his privilege. So I plan to turn in my resignation immediately on my return after this hearing has been concluded.

Commissioner Mitchell.

COMMISSIONER MITCHELL. I think we are both in the same situation. Nor is there anything revolutionary about this. It is not unusual when a President is elected for those who are serving at his pleasure to turn in their resignations. He hasn't waited for any impulses but he has invited everybody to do it, and that's really the difference.

All of us will do it—at least I will do it and Commissioner Rankin will do it—and then it's up to the President as to what happens after that. You should know, however, that we are serving as appointees and will continue to serve until he either accepts or ignores our resignations.

COMMISSIONER RANKIN. There is one other announcement before I call the next group of witnesses, and that is I want to thank them for deferring. Originally on our schedule they were to appear before the group you have just listened to, but due to their commitments they had to meet, they couldn't wait any longer, so they deferred and agreed to put off their appearance until this later hour.

So now I am going to ask Dr. Hazel White, Mr. George Lovato, and Mr. William Baca to come to the witness stand. I wish to thank them for their kindness in this matter.

Would you remain standing until you take the oath.

[Whereupon, Dr. Hazel White, Mr. George Lovato, and Mr. William Baca were sworn by Commissioner Rankin and testified as follows:]

TESTIMONY OF DR. HAZEL WHITE, RESEARCH ANALYST, PUBLIC SERVICE CAREERS PROGRAM; MR. WILLIAM BACA, SANTA CLARA PUEBLO, EMPLOYED WITH STATE PERSONNEL OFFICE; AND MR. GEORGE LOVATO, DIRECTOR, PUBLIC SERVICE CAREERS PROGRAM, NEW MEXICO

COMMISSIONER RANKIN. Will you please be seated?

MR. POWELL. Would you each please state your name, address, and occupation for the record?

MR. BACA. My name is William Baca. I am from Santa Clara Pueblo, employed with the State personnel office under a project that was funded through the Intergovernmental Policy Act.

MR. LOVATO. My name is George Lovato. I live in Albuquerque, work in Santa Fe as the director of the Public Service Careers program.

DR. WHITE. I am Hazel White and I live in Santa Fe, and I am a test development research analyst with the Public Service Careers program.

MR. POWELL. Mr. Lovato, you mentioned that you were director of the Public Service Careers program.

MR. LOVATO. Yes, sir.

MR. POWELL. Would you tell us what that program is and what it is supposed to accomplish and how it goes about meeting its objectives?

MR. LOVATO. Yes, sir. The Public Service Careers program is funded under the Department of Labor 100 percent, and we are sponsored by the State personnel office. The objectives of the program are under two components, component one being the human resource development.

And this entails looking at the class specifications for employment in State government. This looks at the testing procedures, the relevancy of tests and how people are being measured, and improving the merit system to make it more responsive to the citizens of the State of New Mexico.

The second component is an employment and training phase which we are talking in reverse of a commonly known training program where we are talking about training. In this sense we are saying: Reverse it 180 degrees and employ the people on budgeted permanent positions in State government and then provide them with postemployment related training to that field they are in during training.

MR. POWELL. Does your program have a specific component for Indians?

MR. LOVATO. Our contract—and this is contrary to a grant—

states that we will hire 259 disadvantaged people in the State of New Mexico. And that means all citizens that meet that criteria.

And the number one thing meeting that criteria, they must be members of poor families. And then we apply others, age and dropout type standards.

MR. POWELL. I'm not sure I understand that. Are you saying that there is no specific component for Indians but the program is aimed at all disadvantaged people?

MR. LOVATO. And that includes Indians, sir. That would include total makeup of the State population, Indians, non-Indians.

MR. POWELL. Are there any particular steps taken aimed specifically at Indians?

MR. LOVATO. There certainly are, sir.

MR. POWELL. What are they?

MR. LOVATO. Since April of this year we have been working with the health and social services agency. Naturally we have to look at the makeup of the State where the Indians are. So we have to be realistic about those things.

We know—we have been hearing it all morning here—that McKinley and San Juan County are predominantly Indian people. So we focus in those areas. We have been working with the county directors to find out who is employed and who is Indian and who is non-Indian type.

Since April of this year we have employed a total of 16 Indians in the State of New Mexico, and 14 of those are with social services department. We look at the employment as naturally meeting our numerical game with the Department of Labor where we are going to hire 259 people.

But one thing would be more important than that and that is what happens after they become employed. Therefore, we are looking at the training aspect of our program and to prepare them for the upward mobility within that agency and make sure they can fit into a career ladder series.

MR. POWELL. How long has the program been in existence?

MR. LOVATO. July of 1971. And it came into— We went in in two phases. Phase one was refinement: find out what we are going to do and how we are going to get it done. And November 1 of 1971 we went into the employment and training phase of it and concurrently doing the human resource management part of it as well.

MR. POWELL. Have you encountered any problems in obtaining the goals established for Indians?

MR. LOVATO. Yes, sir, we have. In fact, I kind of would like to

go back and state my feelings as far as what can be done as to the problems we are hearing here today. I think this is far more important than to tell you the specific area we are working with.

But I think we are looking at it in general terms. The Public Service Careers program deals in general with the population of New Mexico. I feel very strongly that if you can get a program of this nature to deal directly with Indians and prepare them for jobs whereby the skills are required— We don't want to kid ourselves and say that we want to be so responsive to bring somebody that is noncompetitive to a job. We are doing a disfavor for them.

But I think if we look at it from the aspect of preparing these people for the jobs, we are really being realistic in the long run. I have recommended this to some of the Indian leaders. I have been dealing here with Willy Baca. We have been talking about this type of a thing. And I feel that, as a suggestion, the fact that New Mexico has limited revenues—and I don't know if you care to hear that—but my feeling is that as much as 57 percent of the land in New Mexico is federally- or State-owned means we are not getting enough revenues to support the population in the proper manner, so we have to look elsewhere for financial resources.

And the Federal Government has program after program, and I think a concerted effort should be made at this point whereby we should pursue an Indian program where they can be trained for specific jobs.

When the State of New Mexico says, "Here is a classification series. This is the minimum requirement. Go to the job banks and see who meets that and who doesn't. And who doesn't, make sure we get them prepared for that task"— And I think this would be really affirmative action. I think then we are really responding to the need of the job and to the need of the people.

But we can't say that we want to bring them on because, like the saying goes—bleeding hearts—we just give them a token job. I think we ought to make sure they are prepared, that they can compete on it. This is my recommendation for the future of the Indian people themselves in concentrated areas where the population is primarily Indian.

MR. POWELL. What is your connection to the State personnel board?

MR. LOVATO. We are sponsored, we are under the direction of the personnel officer, and the basic difference being that we are paid by the Federal Government.

This brings pretty much the point that I made earlier. I feel very strongly that the personnel office has desires, has had it for years, to improve the system, to make it more responsive, to make it more realistic, do away with artificial barriers. But lack of funds has— It hasn't been available for them. Therefore, it hasn't enabled them to get enough staffing and the proper staffing to perform the job that they are delegated to do.

MR. POWELL. What you are saying is that since over half of the land in New Mexico is owned by the Federal Government and it doesn't produce tax revenues, the Federal Government ought to provide more monies?

MR. LOVATO. That's right.

MR. POWELL. But in providing Federal monies, I take it, Federal administrators would look to see how effectively you have used other Federal monies, would they not?

MR. LOVATO. I would think so, sir, and I would feel that would be something the State would recognize.

MR. POWELL. There has been testimony that Federal monies have not been used very efficiently, particularly in programs administered under contract by the employment security commission. That would be one consideration?

MR. LOVATO. I have heard that. I will speak for my program, sir, and as of the 15th of November we have employed 200 poor people in the State of New Mexico government, and we have till March of 1973 to complete the contract, and I am overly confident that we will meet that goal.

MR. POWELL. Very good.

MR. LOVATO. But we are also improving the system as we go.

MR. POWELL. Very good.

Mr. Baca, would you tell us again about what your job is and what it encompasses?

MR. BACA. Yes, I will, but first I'd like to say something, with all due respect to you gentlemen.

I came into this job because of the job description. I found it as it is written to be very challenging, and I came in with all the sincerity of trying to help the Indian find employment or to inform them of the State employment practices. And I hate to be described as a token Indian.

Thank you.

MR. POWELL. Are you referring to the testimony of the State personnel board to the effect they only had one Indian who was involved in getting other Indians? Is that the testimony you are referring to?

MR. BACA. Yes, that was it.

MR. POWELL. Well, I was not referring to you, Mr. Baca. I was referring to the approach that some agencies have, having only one person, the "token Indian" approach. It's something that all of us who are minority people face.

I certainly apologize to you if you took that personally. But I was not addressing my comments to you. I was addressing my comments to a State agency which only has one Indian.

Do you feel that one Indian is enough to meet the gigantic problems of unemployment among Indians?

MR. BACA. No, sir.

MR. POWELL. Okay.

MR. BACA. My job as described is to conduct an inventory of available Indian manpower and to develop plans to increase employment of Indians in public service jobs in New Mexico.

I have been on this job since September 25, and starting the 10th of October I went out on the reservations visiting them, talking to people that are tribal leaders, like the governors, CAP directors, or people that are involved directly in employment or placement services with the Indians.

The thing that I do out there is to try and find people that are interested in applying for jobs with the State government. This has been very difficult to do because of the time limitation that I have on each of the reservations.

A lot of these people are pretty well busy doing their own jobs, and they don't generally have the time to take me out on their reservation to talk to each of the people, you know, to do a house-to-house type survey.

MR. POWELL. Do you feel that your problem would be lessened somewhat if there were other people who were doing what you do? As I understand it, you are the only one who is doing this.

MR. BACA. Yes, I am the only one.

MR. POWELL. In the entire State of New Mexico?

MR. BACA. Yes, I am the only one so far as I know.

MR. POWELL. Do you feel if there were other people doing what you are doing you would have less of a problem?

MR. BACA. Well, if—

MR. POWELL. If they were Indians, that is?

MR. BACA. Yes, if the tribal leaders themselves would set up, say, a certain date to get together the people that are unemployed, you know, into, say, a meeting or some gathering whereby, you know, I or whoever else is employed would sit down to explain what jobs are open and, you know, to explain the State employment practices.

MR. POWELL. You are suggesting you need more cooperation from tribal leaders? Is that—

MR. BACA. Yes, this could be very helpful.

MR. POWELL. I see. But do you also need more people doing what you are doing? That is to say, contacting tribal leaders?

MR. BACA. If it was— If a project like this is to be meaningful, I think it would need more time and not just a 90-day thing, and this is what I am doing. It's only for 90 days. And to get a more meaningful survey it would have to go beyond 90 days even if there is one person that is doing this job. You know, nobody can do a meaningful job in 90 days is what I'm saying.

MR. POWELL. Do you feel that the program is effective in helping Indian people prepare for State examinations?

MR. BACA. Well, I feel this way. The way I carry my job on, on the reservations if I talk to— If I go to a place that I am not familiar with, say like out in the Navajo country or in Zuni or say up in Dulce are the places that I have been to where I am not familiar with—and up in the northern area, where I am more familiar with those people up there, I can contact people that I know that will, in turn, refer me to those people that are unemployed.

But in places where I am not familiar with the people it would take me, say maybe 3 or 4 days, just to stay on that one particular reservation to visit people named, you know, people that might be interested in applying for State jobs.

And to sit down and explain to one person what is involved, you know, like filling out applications or describing the job, what the minimum requirements are, and all this, well, this would more than likely take an hour or maybe an hour and a half, because the person himself would have questions to ask me. So it's a time-consuming thing and—

MR. POWELL. Well, this suggests, doesn't it, that your problem would be lessened if you had more people to do this?

MR. BACA. If there were—

MR. POWELL. And people who are familiar in areas where Indians are that you are not familiar with? Doesn't it?

MR. BACA. Yes.

MR. POWELL. Then I think we're agreeing.

Dr. White, briefly outline your educational background and experience prior to your present job.

DR. WHITE. I have a master's degree and a Ph.D. from the University of New Mexico. I took both my degrees part-time while working at other endeavors. I worked on and off at the Southwest Cooperative Educational Lab for a number of years.

I have done cross-cultural testing in Colorado, New Mexico, and Arizona.

Is there anything else you would like to know?

MR. POWELL. No, that's fine. As test developer and research analyst, what are your responsibilities?

DR. WHITE. It's really twofold. It involves test development and then test validation, which is the statistical analysis of the tests you have developed. A large percent of the work that I do is statistical. Statistics are very important to objective testing.

MR. POWELL. Would you explain that? What impact does this have on determining whether or not Indians—the examining procedure somehow excludes Indians?

DR. WHITE. I have found that items on a test, if they prove out statistically well, will tend not to discriminate against any group. We have done a large cross-cultural study with Spanish surnamed and we found on the particular test—We have a lot of activity in the clerical series, and you need a large sample to, you know, make any kind of generalization. We had a sample of 200, 100 Spanish surnamed and 100 Anglos.

MR. POWELL. This suggests that you have sort of proved out your tests vis-a-vis Spanish surnamed people and Anglo people. Is that correct?

DR. WHITE. Right.

MR. POWELL. Has anything along these lines been done for Indians?

DR. WHITE. There is a problem of identifying an Indian population. At the present time we don't ask ethnic origin on applications. Only after employment we get this data. And it's never associated with a person's name in the computer.

COMMISSIONER MITCHELL. How do you know you have Spanish surnamed people then?

DR. WHITE. We do back— I don't know if you care to know about the techniques of our testing.

COMMISSIONER MITCHELL. What you're saying is you can identify a Spanish surnamed person after he is employed?

DR. WHITE. We can identify them before they are employed.

COMMISSIONER MITCHELL. How?

DR. WHITE. Because we can go back and match up an I.D. number with a book where they sign into the testing center.

COMMISSIONER MITCHELL. What about the Indian?

DR. WHITE. We can't recognize him. The Indian names.

COMMISSIONER MITCHELL. But many of the Indian names sound like Spanish surnames.

DR. WHITE. We have—

COMMISSIONER MITCHELL. And I met an Indian yesterday

here named McCabe.

DR. WHITE. Yes. We have Wilson too.

COMMISSIONER MITCHELL. So your Spanish surname data may include a lot of Indians.

DR. WHITE. It's not a pure sample. But it's an accepted research procedure.

COMMISSIONER MITCHELL. Well, I don't think we ought to take up time on what accepted research procedures are. But when you say your sample is diluted, then you have to acknowledge the fact that everything that you are talking about has a major dilution factor in it.

You also, by the way, as you know, can test Indians any time you have an employed group of Indians who have taken prior tests. You can go back and figure out what— Have you done that? Taken any group of employed Indians and gone back and seen what their test scores are?

DR. WHITE. This is in process now. This is our predictive validity study, and it will take some time.

MR. POWELL. One other thing. All the indices show that Indians are not getting equal employment opportunity. In view of that, is there any reason why racial data can't be collected when people take tests? Is there anything that would prohibit the collection of racial data?

DR. WHITE. I couldn't answer that. I know that it isn't done.

MR. POWELL. Putting aside any legal question, in looking at your problem in terms of developing procedures that are not biased against the Indians, wouldn't you need that kind of data?

DR. WHITE. We really do, yes.

MR. POWELL. Are these tests developed by you solely or are they developed by the State agencies? How are the tests developed?

DR. WHITE. Mr. Heim, health and social services [department], commented earlier about the way we are developing tests since the EEOC guidelines have come out, and it is a lengthy procedure, and, you know, it's not just something you can throw together.

Mr. Heim at health and social services was concerned about a case worker test. Mr. Heim appointed a task force, and the task force worked with me as to what they wanted this person to bring to the job, what, you know, the absolute requirements were.

Then we sat down and developed factors. Then we sat down and we developed actual items. Items are professionally developed. We get a lot of our items from the Public Personnel

Association in Chicago. And we have built up files of items, and many of these we have statistical data on past performances, either on that test or on other tests.

MR. POWELL. In response to Dr. Mitchell's question you mentioned something that you have former Indian employees and you were testing this out and would have some kind of way of determining to what extent these tests are fair to Indians? Is that correct?

DR. WHITE. If we had an Indian sample, we would welcome them to take the test prior to publication because this is what health and social services did. We purified the test again after the task force had approved the draft. They sent their own people over, their people that were in case worker positions. They sent them over and they took the test, and we further refined it based on that data.

COMMISSIONER RANKIN. May I ask a question? Do you keep a record of repeaters who take the test?

DR. WHITE. Yes, we do.

COMMISSIONER RANKIN. Are they more successful in repeating the test?

DR. WHITE. Overall they tend to be more successful, but we have a difficult time encouraging people to retake a test. They get discouraged and they won't come back.

COMMISSIONER RANKIN. But can't you improve your program on that?

DR. WHITE. We're trying. I would like to mention a program. We have tried to be responsive to any legitimate requests for our presence at anything, and several months ago we attended what they called a pre-examination workshop which was sponsored by a group called the black manpower committee.

At this workshop, Mr. Spath—a number of us participated from the State government—explained the whole procedure of how you go about knowing what jobs are open, how you fill out an application, how you record your experience so that you adequately describe your experience.

Then we did some practice tests. We talked about some tips about taking tests. And then we actually took a State test—gave them the opportunity to take a State clerical test, and if they passed the test they were awarded their score. We felt this relieved a lot of the tension, the apprehension about testing.

COMMISSIONER RANKIN. Do you send out sample tests like they do in certain Foreign Service examinations and all those? Do you send out certain sample tests so they can get used to it?

DR. WHITE. We have these available, and through the Public

Service Career program we have quantities available.

COMMISSIONER RANKIN. Are they asked for?

DR. WHITE. Yes, we have distributed several hundred anyway, and we used them at this pre-examination workshop.

COMMISSIONER RANKIN. You know, high school students take the SAT [Scholastic Aptitude Test] test generally twice or three times, and they learn a lot by taking these tests.

DR. WHITE. Yes, they do.

COMMISSIONER MITCHELL. Mr. Chairman—

COMMISSIONER RANKIN. Yes.

COMMISSIONER MITCHELL. —I'm on the board, the college entrance examination board of the SAT. I serve on its national board. It is true that students take them frequently. But I'm not sure I understand what the benefit is of improving your performance on tests unless that improves your performance on the job. So one has to be very careful that we don't sit around teaching people how to pass tests which are in themselves of no consequence.

Have you got any test on which you have a valid data base that you would professionally endorse as an indication of the relative ability of an Indian?

DR. WHITE. As I say, we have difficulty identifying an Indian.

COMMISSIONER MITCHELL. So you have none?

DR. WHITE. No.

COMMISSIONER MITCHELL. Therefore, you have no way of knowing whether the Indians would perform a lot better on tests than anybody else you have ever tested.

DR. WHITE. Our approach has been making tests fair for all groups using statistical evidence.

COMMISSIONER MITCHELL. But you don't know whether the Indians are the smartest group in New Mexico or not.

DR. WHITE. No. I would like to have an Indian sample.

COMMISSIONER MITCHELL. Well, I just want to make it clear that there is a tendency to make tests an end in themselves or to overuse tests or to do what Dr. Hutchins, an old colleague of mine, once called the "application of mechanistic and immoral uses to tests."

Tests are at best, you will agree, an indicator, at best very sensitive to the conditions under which they are given, and take many, many years to construct and are frequently lagging behind what is really happening in society. Thus, the national rate on SAT's on college board tests is slowly going down, and the reason for that is the schools are doing a worse and worse job of teaching children how to read. And tests are

based on how well you read. It isn't that the children are getting dumber. It's that the schools are getting dumber.

These are the kinds of consideration I think we have to get in the record before we get overcommitted to tests as an evaluator of value in the particular Indian situation we are studying here.

DR. WHITE. We do have other selection procedures. I think we are kind of hung up on written exams. We do have the rating and ranking of experience. We do have the oral examination.

Now, under the PSC [Public Service Careers] program, the State personnel board allowed us to put through a specification that required that a person be disadvantaged, and this is called a junior clerk position. The examination for this is an oral examination.

And we have felt that we have been able to exercise some latitude in looking at these people not as far as achievement but as far as potential because, as George explained, the PSC program does come along, the person gets their job, they can provide the training, and we have found that our clerk 1—Incidentally, our clerk 1 spec. is the same salary as the junior clerk. The only difference is the selection procedure.

We have found that after training the person that has originally flunked the clerical test will pass that very test that they have failed, but we can use the oral to get them into State employment.

COMMISSIONER MITCHELL. Good.

MR. POWELL. I have no further questions, Mr. Chairman.

COMMISSIONER RANKIN. Mr. Mitchell?

COMMISSIONER MITCHELL. No.

COMMISSIONER RANKIN. Well, thank you very much.

Do you have a statement?

MR. LOVATO. Yes. I would like to just make one more statement I guess. And what we are doing—kind of getting back to how relevant, how meaningful is the tests we are developing—we are going out into the field into the agencies and specific classifications, especially problem classifications, and we do personnel management evaluations and come back and perform a type of test identification.

And every time we do this—and we do it in joint effort with Dr. Hazel White so that she can see the job itself, how the people relate to it, and how they interpret the job—and we feel that the development of a test in this process is really getting to what the job is all about, and we can really measure the people for it.

We find that a lot of the entry level jobs really shouldn't be written exams, and we got into the oral category and then provide the training, and it's very, very helpful.

And I'd just like to plug in one more thing, that the rate of turnover in this disadvantaged group of people that I spoke of, since last November in the year's track record we have lost 10 out of 200, so I think that this proves that the positive approach of the job, not the promise, is the thing to go.

COMMISSIONER RANKIN. Thank you very much.

The next witness is the director of the Equal Employment Opportunity Commission, Mr. Tom Robles.

Would you remain standing to take the oath?

[Whereupon, Mr. Tom Robles was sworn by Commissioner Rankin and testified as follows:]

TESTIMONY OF MR. TOM ROBLES, ALBUQUERQUE DISTRICT DIRECTOR, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

COMMISSIONER RANKIN. Could you identify the person with you?

MR. ROBLES. He's a field attorney for the Albuquerque District Office.

COMMISSIONER RANKIN. Thank you. What is your name?

MR. BERT. Ellis L. Bert, field attorney, Albuquerque District Office, Equal Employment Opportunity Commission.

I would just like to preface this that Mr. Robles appears here with the consent of the General Counsel of the Commission in conformity with the rules and regulations as set forth regarding production and response to subpoenas. They appear at 29 CFR section 1610.30.

COMMISSIONER RANKIN. Thank you.

Mr. Powell.

MR. POWELL. Mr. Robles, you are the regional director, is that it?

MR. ROBLES. I am the district director.

MR. POWELL. District director, yes. How long have you held this position?

MR. ROBLES. Since August 23, 1966.

MR. POWELL. Could you briefly describe the jurisdiction of the EEOC Albuquerque district office?

MR. ROBLES. At the present time the Albuquerque district office has geographic jurisdiction over New Mexico, Oklahoma, and 32 counties in west Texas. I also have supervisory supervision over the Denver district office which covers Colorado, Utah, Wyoming, North and South Dakota.

MR. POWELL. You are under the regional office? Would you explain the distinction between the two offices? What regional office do you fall under?

MR. ROBLES. We do not have a regional office at the present time. We are moving into the 10-region concept. And the Albuquerque and the Denver district offices are not in any region at the present time. The Denver region is about to be instituted probably in the next year or so, at which point the Albuquerque district office will probably move into the Dallas regional office.

MR. POWELL. What is the distinction in terms of functions between the district office and the regional office?

MR. ROBLES. The regional office services the administrative needs of the district offices under its jurisdiction. It also maintains liaison with State and local governments and Federal agencies, and it does voluntary programs, technical assistance type work with companies, unions, State agencies, State and local governments, educational institutions, and so forth.

The district office is strictly a compliance office, a case processing office. We receive charges. We analyze charges. We investigate charges. We issue determination letters, and then we attempt to settle or conciliate in cases of probable cause.

We also have litigation responsibility, which is another area that is going to be restructured. The Commission is presently moving into litigation centers, five of them. One of them will be in Denver, Colorado, and will service the Albuquerque and the Denver district offices and all of the Dallas region.

MR. POWELL. In enforcing your mandate, do you merely respond to complaints or do you undertake your own investigation to bring actions?

MR. ROBLES. Generally we just react to individual charges. However, there is a procedure under the law, under Title VII of the Civil Rights Act of 1964 as amended, that allows the Commissioners to issue Commissioner's charges.

MR. POWELL. To what extent at your level do you get into the business of initiating charges of your own?

MR. ROBLES. We have been quite active in that area. We have proposed Commissioner charges I would guess over the years— Probably in the area of about 40 or 45 Commissioner charges have been proposed, of which probably half of them have been accepted.

MR. POWELL. With respect to the complaints you receive, have you received many complaints from Indians?

MR. ROBLES. Very few.

MR. POWELL. How many have you received?

MR. ROBLES. In fact, in fiscal year 1972, out of 651 charges filed in New Mexico, there were only 27 American Indians filing.

MR. POWELL. In 1972, 600 and how many?

MR. ROBLES. 651.

MR. POWELL. And 27 Indian charges?

MR. ROBLES. Right.

MR. POWELL. To what do you attribute such a small number, Mr. Robles?

MR. ROBLES. I think it's a variety of things. First of all, I think that probably most of the American Indians that have problems that we can help are urban Indians. And they really don't know to a great extent that we exist, that there is a Title VII that makes it unlawful to discriminate against anyone because of race, color, religion, national origin, or sex in employment.

I don't think that the Commission has done a very adequate or even a minimal job of reaching the urban Indian. That's probably the big reason.

The other reason is that those Indians that do know about the agency are sometimes reluctant because they really don't believe that there is any protection in Title VII, that there will be reprisals. This was voiced yesterday afternoon.

MR. POWELL. Ms. Kirk testified to this, yes.

MR. ROBLES. Yes. And I think that is a deterrent. And I think that the only way that we can overcome that is to really prove that we protect people that file charges or act as witnesses. In addition to that, I suppose that some of it has to do with the Indian culture that is against airing personal problems openly or publicly. I think there is a variety of reasons for this, but the biggest reason is that they really don't know about us.

MR. POWELL. What has EEOC done to increase Indian employment in the private sector? In this State Indians apparently have very little opportunity. Has anything been done either at your level or in Washington to address this problem?

MR. ROBLES. I think we have done very little if anything. We have attempted a couple of things. There was a witness that testified to an EEOC grant that was given to the Southwestern Cooperative Educational Laboratory that is underway to ascertain how in fact we can be more effective in helping the urban Indian.

There is a voluntary programs section in the Equal Employment Opportunity Commission that addresses itself to this and deals with new plants, deals with giving technical assistance to

companies and to unions and State agencies, all of the entities covered under Title VII, and endeavors to give guidance and assistance in the formulation of affirmative action plans in overcoming some of the problems that they may have in properly utilizing minorities.

In the area of American Indians there's been very little activity simply because of the fact that, as I stated earlier, we are in limbo insofar as the regional concept is concerned, and all of this activity originates either out of Washington, D.C., or out of the regional office. It does not exist in district offices.

I submitted some time back a proposal that the Commission fund a program that would address itself specifically to the American Indian and American Indian needs. And it was considered, and I guess it was one of the three that were finally considered out of all the regions that submitted. But because of lack of funding and because of change in the structure of the organizational structure of the Commission at that point in time, which would not allow voluntary programs offices to exist in district offices, it went by the board.

There has been some funding in the State of Arizona of an Indian program by the State and Community Affairs Division of the EEOC. This has been ongoing now and refunded every year since 1967. It has done some good. It has been primarily effective and implemented in the city of Phoenix. It's not a statewide program. And the funding has been very minimal. I think that it started out with \$15,000 a year, and I think it has been maintained at that level throughout.

We haven't had an Indian program in New Mexico.

MR. POWELL. I see. You testified earlier, I believe, that you are not in a regional office now but you are about to become part of the Denver region. Is that correct?

MR. ROBLES. No, of the Dallas.

MR. POWELL. Dallas region.

MR. ROBLES. We really don't know when this will happen.

MR. POWELL. I see.

MR. ROBLES. We have been told maybe in about a year.

MR. POWELL. What region is the Phoenix office under?

MR. ROBLES. San Francisco.

MR. POWELL. Well, does the split-up of the two districts, Phoenix and New Mexico, into different regional offices, particularly where there are large Indian populations in both these regions— Is that helpful? Is that the best way to do it?

MR. ROBLES. No, I don't think so.

MR. POWELL. What would be a better solution?

MR. ROBLES. Well, when we first opened the Albuquerque

office up we had jurisdiction over New Mexico and Arizona. That in itself was better at that point in time.

That lasted about a year, and then we moved into— They took Arizona away from us and they gave us Colorado, Utah, Wyoming and we existed there for a while. And then finally we went into what we have now June of 1970 when we reorganized into the new structure.

COMMISSIONER RANKIN. Do they ever give you any reasons why they make these changes?

MR. ROBLES. Well, principally because they were trying to conform to the President's 10-region concept which sets up specific regions for all Federal agencies.

I don't think that that 10-region concept does any good for the EEOC in regard to the Mexican American and the American Indian. I think it's detrimental. And I have on at least three occasions submitted proposals for changing of the geographic lines so that we could develop a real meaningful Indian program and a real meaningful Mexican American program insofar as our activity is concerned. But apparently the Commission feels that they have to adhere to the 10-region concept.

MR. POWELL. Mr. Robles, have you discussed the employment problems of urban Indians with tribal councils and tribal leaders?

MR. ROBLES. Yes.

MR. POWELL. Is it your impression that such problems are a high priority concern for such leaders?

MR. ROBLES. I don't believe from the reaction that I have received that the reservation Indians have too much concern for the urban Indian. Principally I can understand the reason. They have their problems, and it's reservation problems. And the urban Indian leaves the reservation and he's more or less on his own.

We have a great deal of problem reaching the urban Indian because there is no mechanism with which to do it. Yes, there are some social clubs, some social Indian clubs, but they are really not good mechanism to reach the individual Indian that has employment problems. And that is principally the reason, the rationale behind the EEOC funding the program with SWCEL [Southwestern Cooperative Educational Laboratory] so that we could get some real concentration and study on how we could reach the urban Indian. We can't do it through the reservation.

COMMISSIONER MITCHELL. Mr. Powell, I think we should be careful here to make it clear that whatever the feelings of

tribal leaders and tribal councils about urban Indians, they are intensely concerned about reservation Indians' problems.

MR. POWELL. True.

MR. ROBLES. Yes, and in that regard, Commissioner, the EEOC has very little jurisdiction. As you know, under the law the tribes are exempt under Title VII.

The only area that I think that we could be very helpful in— And I have suggested, as well as Mr. Bert has suggested, that the Commission define zones and areas so that we can start promoting preferential treatment for American Indians in a meaningful way as Congress intended when they put it into the law.

Congress gives preferential treatment for hiring and employment of American Indians on or near reservations, and it would seem to me that from some of the testimony I heard late yesterday afternoon that most employers are not aware of this, the fact that they can advertise for American Indians for any job that might be open for which they might be qualified. They can specifically request American Indians if they are on or near reservations.

MR. POWELL. But isn't one of the problems, Mr. Robles, that that term is ill-defined?

MR. ROBLES. Yes.

MR. POWELL. For example, would it be helpful to the Indians if the term were definitely to include Albuquerque within the phrase "on or near reservations" or Phoenix would be within that phrase?

MR. ROBLES. Certainly. It would seem to me—

MR. POWELL. Couldn't EEOC, given its mission, petition Congress in its testimony to make that clear, to make it clear, or BIA, for example, is the agency which interprets this. Perhaps you wouldn't even need congressional action.

MR. ROBLES. Mr. Powell, I think we would need Commission action to define what is meant by "on or near reservations," and I have requested this in writing, but I haven't received it. And I think it's a very— Perhaps because of the distance, you know, from Washington, D.C., and New Mexico, Arizona, and the areas where we have Indians that they don't think that it would be very helpful. But it would be very helpful.

MR. POWELL. We might be of some assistance in that regard.

MR. ROBLES. Thank you.

COMMISSIONER RANKIN. Do you think it's distance rather than disregard of Indian problems?

MR. ROBLES. Oh, I don't think there is disregard. I think that Chairman Brown has been quite concerned about the

Indian problem, has been trying to find ways in which to do something to be helpful. But I think that there are so many other priorities and the reorganization and all of these other things that take up the time of commissioners that I think they just haven't addressed themselves to this situation.

MR. POWELL. Okay. Mr. Robles, in that connection, hearings were held by the Equal Employment Opportunity Commission in Houston in June 1970. I take it you are familiar with those hearings.

MR. ROBLES. Yes, sir, I am.

MR. POWELL. A Mr. Atencio who has been one of our overview witnesses here made seven specific recommendations to the Commission to overcome what Mr. Atencio characterized as built-in barriers to equal employment. Do you know of these recommendations?

MR. ROBLES. Yes, I recall some of them. In fact, I arranged for Mr. Atencio to appear there.

MR. POWELL. What if anything has been done by EEOC to implement Mr. Atencio's recommendations?

MR. ROBLES. None that I know of. One of the ones that was of great importance that I felt would remove, would overcome the distance problem would be to set up an Indian desk at the EEOC headquarters. This hasn't been done.

MR. POWELL. I see. And here again it's the question of whether this is disregard or distance?

MR. ROBLES. I think in this regard I welcome this hearing because I think that you will be helpful in this regard to bring attention to the problem.

COMMISSIONER RANKIN. You have made several suggestions, haven't you, to improve it, but your batting average isn't very good with the Commission. Is that right?

MR. ROBLES. Insofar as American Indians are concerned, my batting average is zero.

MR. POWELL. Do you have an opinion, Mr. Robles, as to why some companies in the Albuquerque area are seemingly more able than others to obtain Indian employees?

MR. ROBLES. I think there are several reasons, several factors that come into play. Some have been mentioned here.

But I think that the fact that we don't have—that we haven't defined "on or near reservations" is one of them. I think that— Because, you know, Congress obviously recognized that there was a tremendous problem facing American Indians in employment, and they wrote in the preferential hiring provision into the law to overcome this problem, and yet it hasn't been of any benefit whatsoever because not very

meaningful action has been taken.

So I think that if we would advertise the fact and there would be zones designed that would include, for example, Albuquerque as near a reservation—there's Isleta, there's Sandia, there are many reservations—Phoenix and other cities, large cities, where employers could give preferential treatment to American Indians in employment, I think that would be very helpful.

The other reason is that I think many of the employers, particularly the new companies coming into the area, generally are very sensitive to reaching the American Indian. Their recruitment may not be proper or may not be very effective, but they come in here and they know that there is an American Indian population and they try to reach the American Indian population.

But the old established companies— Because as you have heard testimony given here, you know, they say, "Well, you know, the law just says minorities." And so really I buy the concept that, you know, there has been a great emphasis on black employment; there's been a great emphasis, recent emphasis, on Mexican American employment, and I think at the expense of the American Indian. And there has been very little emphasis on the American Indian and the great problems that they face in unemployment and underemployment.

And I think that the old companies that do have affirmative action programs, the large companies, the established companies, say, "Well, we'll hire minorities and we'll try to have an adequate utilization of minorities," but then, you know, the American Indian doesn't even get the crumbs, much less a piece of the pie.

MR. POWELL. Thank you.

Mr. Chairman, I have no further questions, but I would like this entered into the record. This is a transcript of the remarks of Mr. Atencio before that hearing, EEOC hearing, of June of 1970.

COMMISSIONER RANKIN. It is so ordered.

[Whereupon, the document referred to was marked as Exhibit No. 12 and received in evidence.]

COMMISSIONER RANKIN. Mr. Mitchell?

COMMISSIONER MITCHELL. Just one question, Mr. Robles. The Civil Rights Commission's interest is addressed in various places and at various times to the minorities who seem to be the most affected by the fact that they are members of minority populations. These would be the black people, the Mexican American or Spanish surnamed people, and the Indi-

ans in this case.

In your office here, what percentage of your activities is addressed to each of those segments would you say? In other words, given 100 percent of your time spent on the problems of equal opportunity, equal employment opportunity, for various members of various minority constituencies, how would you break it down? Do you spend half your time on any one group, for example?

MR. ROBLES. I think— Well, maybe I could better respond by giving you an indication more or less of who files the most because that's where our attention would be, as we are complaint-oriented so we react to charges. Unless you mean extra-curricular activity or—

COMMISSIONER MITCHELL. Let's start with complaints.

MR. ROBLES. Okay. Insofar as complaints are concerned, a very recent amazing thing has happened. The black community has surpassed the Mexican American in the filing of complaints in this whole area where we operate, and probably because of better organizational techniques and what have you, the fact that the black community knows more about us than any other group, that sort of thing.

And then the Mexican American community comes in second. And then women. And then we have probably religion coming in fourth.

And American Indian last, very—in fact, almost— I guess it's 3.7 percent overall is the number of charges they have filed with us. Of the total charges that we had in fiscal year 1972, for example, 1,414, American Indians filed 52, or 3.7 percent.

So that is where our compliance attention is more or less.

Insofar as individual or attention of professionals that have extra time, let me just run through a few of the things.

First of all, my office originated a communication to Chairman Brown that he assign a full-time American Indian for a 6-months period to recruit American Indians for consideration for employment by the Commission. Chairman Brown assigned three American Indians half-time for 6 months, one out of the Albuquerque district office and two out of the Dallas regional office.

And then we wrote letters to 263 tribal chiefs throughout the United States, and I have a list of all the tribal chiefs if you would want them for your record.

COMMISSIONER MITCHELL. No, I just wanted to get the breakdown of time and the way the Indians and others here were using your agency. It's interesting that the Indian constituency here which has intense problems in employment is

making such highly limited use in any way of the Equal Employment Opportunity Commission.

Thank you.

COMMISSIONER RANKIN. Mr. Buggs?

MR. BUGGS. Mr. Robles, as you know, one of the celebrated cases that EEOC has been having recently is the case against the American Telephone and Telegraph Company, and I suppose— Yes?

MR. ROBLES. I can't respond to any question on any individual case, if you will forgive me.

MR. BUGGS. Well, let me just ask a very general question. In connection with matters involving Commission charges against firms, is this region taken into consideration in terms of the problems that American Indians have in terms of the employment by private industry?

MR. ROBLES. Yes. We have several of the Commissioner's charges that we have forwarded to Washington for consideration were based on the underutilization of American Indians by certain companies, certain rather large companies.

MR. BUGGS. Thank you.

COMMISSIONER RANKIN. We thank you for appearing. We hope you continue at bat insofar as the employment rights of Indians are concerned and although many of the suggestions that you have made in their behalf are just foul balls, you are still at bat, and one of these days they're going to take a recommendation and you will have a grand slam home run.

MR. ROBLES. Thank you very much.

COMMISSIONER RANKIN. That's what we hope for.

MR. ROBLES. That's my hope and I hope you can assist us in this.

COMMISSIONER RANKIN. I hope we can, and I hope this hearing here will be of assistance to you in your undertaking in that respect.

Thank you very much, both of you.

We now stand adjourned for the noon recess until 2 o'clock.

[Whereupon, at 1:00 p.m., the hearing was recessed, to be reconvened at 2:00 p.m., this date.]

WEDNESDAY AFTERNOON SESSION

November 15, 1972

COMMISSIONER RANKIN. Will the hearing come to order? First, Mr. Powell wants to make an announcement.

MR. POWELL. On yesterday we called for the appearance of Ron Marshone and Mr. Winston Hunt, both of the Public Service Company. Through an inadvertence in the subpoena, they were not really informed that they were supposed to be here yesterday. They thought they were supposed to be here today. The Commission has decided to excuse both those gentlemen from appearing.

COMMISSIONER RANKIN. Thank you.

This afternoon we are going to consider the question of water rights, and first I ask Mr. Raymond Simpson to come to the witness stand.

[Whereupon, Mr. Raymond Simpson was sworn by Commissioner Rankin and testified as follows:]

TESTIMONY OF MR. RAYMOND C. SIMPSON, ATTORNEY, LONG BEACH, CALIFORNIA

COMMISSIONER RANKIN. Will you proceed?

MR. POWELL. Mr. Simpson, will you please state your name and address and occupation for the record?

MR. SIMPSON. My name is Raymond C. Simpson. My address is 110 Pine Avenue, Long Beach, California. By vocation I am an attorney-at-law and my law office is in California.

MR. POWELL. Mr. Simpson, would you please give us a brief rundown on your background, training, and experience in law with reference to your experience in Indian land and water rights matters?

MR. SIMPSON. I'd be happy to. My legal training was obtained at the University of Chicago where I obtained my juris doctor in 1947. From there I went to California and started teaching constitutional law at the University of Southern California.

That led me into my first contact, frankly, with Indians, because the university had a habit of sending me out on different speeches on civil rights and institutional changes. An Indian asked me a question which I could not answer regarding Indian law, and that led to some research, led to an answer for him which caused him to ask me to go see his tribe.

That was the Agua Caliente Tribe in Palm Springs, California, where they had some acute problems regarding land development. And so I became general counsel at that time for that tribe.

We worked legislatively in terms of trying to obtain legislation for Indians regarding leasing, because at that time Indians could not lease for more than 5 years. We obtained a bill, Public Law 255, allowing them 50 years, found it was inadequate, and so in 1959 proceeded to have the right of the Agua

Calientes increased to 99 years. Also the Mojaves later on, another tribe I represent.

In addition to that, my contact with the Mojave Tribe and others on the Colorado River, where I represent the Confederation of the five Lower Colorado River Tribes, led me into the title problems all of them are facing, and particularly the water problems in terms of development. That led to experience with some of the pueblos where I now represent certain of those for the purpose of trying to clarify their water rights.

There is a great deal, Mr. Powell, in terms of cases we have been involved in, but perhaps rather than ramble on, I hope this provides what you want and I can perhaps interlineate in conversation as we respond to the questions of the Commissioners.

MR. POWELL. Well, in order to provide a background for the discussion that we'll hear subsequent to you, would you tell the Commission about the water rights, the legal basis of water rights for Indians, how that developed, and the special relationship of the United States Government in protecting those interests and other interests, but particularly the interests of Indians to the use of water?

MR. SIMPSON. Yes. Trying to capsule it, because books have been written on the subject, we operate from the premise with Indian water rights, as well as land, that the United States of America is a trustee. I don't believe the definition as such requires any particular skilled or legal definition. Webster provides a pretty good one for the duties of a trustee being that of a fiduciary.

The United States when it holds title to the land and to the water for the Indians obviously, as the Supreme Court has said in the *Menominee* case and the *Seminole* case, stands in precisely the same position with respect to Indian land and water rights as any trustee handling money or land or any kind of property for any fiduciary.

COMMISSIONER MITCHELL. Let's clarify that because some trustees are given the right to sell, dispose of, collect all the income, reinvest it for their clients or those for whom they are trustee, while others simply hold in trust and are not permitted to dispose of, rent, lease, collect revenues from those things for which they are trustee.

Now, the definition, therefore, is broader than the one that you have just given us, and I would like to have that clarified by you if I may.

MR. SIMPSON. Yes, Mr. Mitchell, it's a good question. In fact,

it probably has led to some of the problems regarding the duty of the United States as trustee.

My reference to the *Menominee* case and the *Seminole* case is that the Supreme Court has taken the position that you have two kinds of trustees. You do have a restricted and you have an unlimited trustee. The United States of America, because of the power vested in Congress by virtue of the Constitution itself, has been viewed by the Court in those two cases as being an unlimited trustee.

And even though you have treaties, even though you have agreements, we have case after case where the United States if acting in a manner which it deems as trustee to be beneficial for the Indians has been upheld by the Court in selling, in leasing—it is an unlimited trustee.

MR. POWELL. But that unlimited trust power rests in Congress, not in the Executive? Is that true?

MR. SIMPSON. That is completely true.

MR. POWELL. So that any time rights of Indians are derogated by the executive department without the explicit authority of Congress, that is illegal, wouldn't you say? It would be beyond the authority of the Executive to affect Indian rights without explicit authority of Congress?

MR. SIMPSON. Absolutely.

COMMISSIONER MITCHELL. Well, one step more. A trustee, if he is going to be an identifiable trustee, must have an available publication or statement of what it is he is a trustee of or for.

MR. SIMPSON. This is true. And this has been done. And I will explain—

COMMISSIONER MITCHELL. We are talking about water rights now. You believe that the United States Government has published or could publish the full details of water rights for which it is a trustee?

MR. SIMPSON. I believe if they wanted to they could, and I will explain how they could if you would like me to.

COMMISSIONER MITCHELL. But they have not?

MR. SIMPSON. They have not.

MR. POWELL. Before we get to that, I would like to put on the record what it is that Indians have rights in with respect to water. They do have what is described as prior and paramount rights to use of water along those streams which border, traverse, and arise on reservations?

MR. SIMPSON. Right.

MR. POWELL. Would you briefly give us what the basis for that is so that we—

MR. SIMPSON. Yes, Mr. Powell. We sometimes in loose terminology, in descriptive narrative, call it the *Winters* doctrine. The *Winters* doctrine for Indian law, in a nutshell, is this:

When the case came to the United States Supreme Court—and I would point this out, Mr. Mitchell, in view of your earlier question—there you had land where Congress had authorized that it be held in trust. You also had a provision in the treaty involved in that case regarding how the United States would hold it in trust.

The problem or the dispute arose from the fact that there was a contention that nothing was said in any legal document, including the treaty, with respect to water. It only gave them land. And so the argument was being made: Well, the Indians actually do not have this water.

The Supreme Court of the United States stated that you operate in interpretation from a premise that the Government intends being fair, and that if land loses its value and use because it does not have water, they would imply that the water which had been used to cultivate and to nourish that land before when the Indians occupied it was impliedly included in the trust situation they were describing.

This doctrine has now been applied— This goes back shortly after 1900, and it has been applied consistently wherever you find that the United States by Executive order or by treaty has set apart a reservation, that the Supreme Court of the United States now says, “We told you in *Winters* we will imply enough water to practically use the land.”

They reaffirmed this in *Arizona v. California*. They recently reaffirmed it in the *Eagle River* case.

The point that they make is that Indians have— And this is your question, Mr. Powell—they do have, by implication if not by express language, the right to use as much water as is necessary to properly use the land.

MR. POWELL. Turning to Dr. Mitchell’s question, given the fact that they have these rights and given the Government’s trust responsibility, Dr. Mitchell asked whether there is a way in which the Government can identify that in which the Government has an interest. Do you want to address that?

MR. SIMPSON. The answer is that in some respects or in some instances the Government has done this. For example, in some of the more recent Executive order reservations that have been established, the Government has described in great detail not only the acreage and how it is to be held and what their duties with respect to this would be. And they have done it in some treaties.

I submit, however, in most instances this has not been

spelled out. It has been something which has operated more as a policy of the administration. And this is why I suggested the failure to spell this out in so many instances has led to trouble.

And I will be very specific if I may. There is a case presently pending before the ninth circuit which is *Mojave v. Lafollette*. Now, in that case you have a tribe on the Colorado River with an Executive order reservation. It was set apart in 1911. The instrument does not spell out what you have brought out, Mr. Mitchell.

The result is when the tribe tried to acquire title to that land, the defendants came in and said, "Look, you don't own the land because all you have is a trust instrument"—or not a trust instrument but "an Executive order that says you may occupy this. It's withdrawn from the public domain." And it then adds a cute little phrase, "and for such other Indians as the Secretary may elect to place thereon."

The Supreme Court of the United States in the *Hines* case held that this type of an Executive order does not give any title, that what it in fact does is give them a right of possession at the pleasure of the United States.

We are presently trying to— We are appealing the case. I believe it will be won. But we have to go to a doctrine of recognized title. We have to show the acts of Congress permitting that tribe to lease that land and other things, which if it had been spelled out in unequivocal language as your question has suggested the problem wouldn't be there. And many tribes today are facing that right now.

MR. POWELL. Mr. Simpson, I take it that reservations located on or near rivers, it's recognized that they have rights to the use of water by virtue of the *Winters* case?

MR. SIMPSON. Correct.

MR. POWELL. But you have indicated that the Government as trustee has by and large taken no action to determine exactly how much water it is which Indians have a right to use. Does it create problems? The fact that the quantity of water over which Indians have a prior right is not determined in a quantifiable sense—does it create problems for Indian tribes? And if so, what are those problems?

MR. SIMPSON. The answer is yes. It creates tremendous problems. The problems it creates happen to be tied in with economic development on Indian reservations.

We have the Congress saying, "We want economic development." We have the President saying it. We have all the "do gooders" saying it. But, if you try to develop a reservation along a river and a lessee comes along, that lessee is going to ask you very bluntly, "Do I have river frontage? Am I going to

be able to put development there?" And if you're in the situation where your entitlement to water has not been clarified, you face a critical problem.

And being specific, I have alluded to the case of *Arizona v. California*. In that particular case the United States Supreme Court has said that the five tribes, the Mojaves, the Cocopahs, the Quechans, the Colorado River are entitled to so much water. The rule they set out in that case is they said, "They are entitled to the amount of water necessary to irrigate the land."

Now, they then took the figures of the so-called irrigable acreage that these five tribes had. Regrettably—and I state this as a fact—the two men who were involved most with the Supreme Court were a Mr. Griddle and Mr. William Veeder; Mr. Veeder has explained in detail to me that these figures as to irrigable acreage were never the result of any study to determine it. It was a "guesstimate." That they are inaccurate figures.

And when you face that situation today and the tribes try to come up with a land use plan to develop their reservations, they find chaos confronting them.

Fortunately, that decree is still interlocutory, and the thought is that if they have land use plans made, if they determine from that how much irrigable acreage there is, then possibly the decree could be modified to conform to the real facts.

But that's one illustration of how when you don't know it—Another is on the Rio Grande where when you ask what are the kind of problems they present, when you speak of, Mr. Powell, prior and paramount rights, this is a critical thing that some people do not understand.

They think that if you have an Indian next door to a non-Indian that, in terms of equality, the Indian and the other person should each have, say, one glass of water if there were only two to go around. The fact remains that because the Indian was there first the Supreme Court in the *Winters* doctrine has said, if it gets down to the point where there is only one glass of water left, in substance, the Indian is going to get it because the Indian has a prior right. The other person came later.

MR. POWELL. Unless the Congress takes explicit action to do something else with that water? Congress has that authority?

MR. SIMPSON. Exactly.

MR. POWELL. I want to note for the benefit of the audience that this water rights section will involve the States of New Mexico and Arizona, so that we will have witnesses from

Arizona and the tribes that Mr. Simpson mentioned, the five Colorado River tribes, are Arizona tribes.

Mr. Simpson, you were dwelling on the need from the standpoint of economic development of reservations for Indians to know how much water they have. But isn't there a need for Indians to know how much water they have from the standpoint of making sure that non-Indians along the water in developing water uses don't infringe upon their rights? And isn't that a problem particularly with respect to not only private but public uses, reclamation projects and State projects?

MR. SIMPSON. This is very true. In fact, we have mentioned Arizona. The problem exists there on the Colorado River. We are in New Mexico, and certainly it is critical here in New Mexico. And in both States you find that litigation is brewing by reason of the fact that, one, there has not been an inventory of the actual water available; two, there has been no proper adjudication of the water rights the Indians in fact possess.

And, as a consequence, since progress can't be stopped, you find development occurring in Albuquerque, in various areas along the Rio Grande; but, since the Indians do not know what belongs to them, they are facing the possible loss of their water.

The same is true on the Colorado River, and this is an area where I submit that the trustee as such has been extremely remiss because for many years there has been an opportunity to aggressively deal with this. There is no great task in trying to prepare an inventory, in trying to prepare the land use problem. The fundamental problem is funding.

The Secretary of the Interior acting as the agent of the United States as trustee has consistently neglected to do this, so that now the problem arises, Mr. Powell, as you somewhat pointed to in your question, from the fact that with economic development on non-Indian land taking place, with those non-Indian areas using water from the same basin, you find that the Indians unless they perfect their rights and unless their trustee is aggressive are going to lose that which they properly have under the prior and paramount rights to water.

MR. POWELL. We have heard a lot about the Central Arizona project which, as I understand it, will take 1,200,000 acre-feet of water out of the Colorado, and that water will be directed into New Mexico—no, that's not right—into Arizona. How does that affect Indian interests?

It seems to me that the tribes on the Colorado River, Lower Colorado River Basin, have an interest. Query: Are their rights to water going to be recognized?

At the same time, the dry river tribes are interested to see whether any water that will be directed into central Arizona region they will get the benefit of.

Would you care to comment on that?

MR. SIMPSON. Yes, I would. I would like to take the position that from my own knowledge with the tribes that the Central Arizona project does cause the Indians on the Colorado River to look at it with grave concern, principally for some of the reasons we have already mentioned—the fact that they have not had water inventories prepared, the fact that they do not have land use plans so that they know precisely what is necessary, the fact that they hear a great deal of testimony from people about how the river is already overappropriated.

The State of California, as an illustration, in testimony by the attorney general from that State, told the Congress that California was using a little more than 800,000 acre-feet in excess of California's entitlement.

Well, if you have diversions that could ultimately lead to a river which is described as overappropriated before the Indians have an adjudication of their water rights, they become apprehensive that they might find their lands would not be developed.

Now, the one thing I would underscore here is that you mentioned the dry river tribes and, call them, the wet river tribes. There should not be a conflict between these tribes, although there are forces that I think are using the philosophy of divide and conquer to stir dissension between them. Because the Lower Colorado River tribes are not against any project, but they are for the perfection and protection of their particular water rights.

They feel they must move with all diligence, since the trustee hasn't, to try to safeguard this because they are practical enough in the world in which we live to know that if you divert 1,200,000 acre-feet as called for to the Phoenix-Tucson area, that—the Indians don't want the people in those areas to be deprived, they don't want to be deprived either. They want to make sure that any diversion is something which does not pollute the stream by taking so much out that the salinity gets worse than it is.

It's horrible right now. Mexico, as we know, has been screaming because she couldn't get good water out of the Colorado River.

The Indians feel the same way, particularly since you take the Cocopahs and the Quechans are down at the bottom of this river as it empties into the Gulf down there, and, consequently,

these tribes ask, "What will our status be? Why hasn't our trustee prepared the inventory so we can perfect the rights?"

MR. POWELL. Mr. Simpson, I just have two more questions. I want to discuss with you the problem of conflict of interest. But before we get to that, I think we ought to say a little bit about New Mexico.

We have heard various points of view as to whether or not the waters along the Rio Grande have been overappropriated. We perhaps won't be able to answer that question here. But would you agree that unless the Pueblo Indians and the Apache Indians have their rights, the extent of their rights to water, quantified that there is no way you can tell whether their interests are being protected in general or, more particularly, under the 1928 Rio Grande Conservancy District?

Indian rights are supposed to be protected there. But how can they really be protected until it is determined what the extent of their rights is? Can you comment on that?

MR. SIMPSON. The answer you have really in a certain sense suggested. It is impossible to protect their rights if you do not determine what they are. It's like having a lot of horses out on the range. No way of identifying which horses belong to Mr. Powell. You couldn't say, "Those are my horses."

The Indians can only have their rights clarified with respect to the water by having appropriate land use plans and water inventories prepared, followed by an adjudication in the courts.

One of the things that is critical on this that I have discussed with a number of people is that the old saying, "Justice delayed is justice denied." This is what the Indians on the Rio Grande are facing, because I urge that the things be done that I have mentioned.

I urge that they get into court as soon as possible so that they won't have new cases coming down deciding that the water belongs to other people and later on have the Indians who are down at the bottom, like San Felipe, Santo Domingo, coming in and saying, "But that water belongs to us. We have prior and paramount rights," and have a court say, "Well, there has already been an adjudication."

Well, legally, it would not be *res adjudicata*. It would be precedent, and as precedent it would operate, I submit, against the Indians if 5 or 10 years down the road they are trying to perfect their rights.

They must do it now. It's critical.

MR. POWELL. Well, that's a question over which some people differ. I don't want to get into that.

Mr. Simpson, many people believe that the Department of Interior, which has a duty of discharging the United States trust responsibility to Indians, is structured in a manner which subjects it, the Department of Interior, to insurmountable conflict of interest and that the same is true of the Department of Justice which represents Indians in court. Would you care to comment on this?

MR. SIMPSON. Yes, I would be delighted to comment upon it because I have been involved in the past few years in this, and I will explain by specific illustrations if I may.

It is my considered opinion that the Department of Interior, structured as it is, with the Secretary of the Interior at the top of our pyramid, with the Bureau of Land Management, with the Bureau of Reclamation, with the Bureau of Fish and Sports Life and the Bureau of Indian Affairs; with these bureaus having competing interests, it is impossible for the Secretary of the Interior to sit at the top here and be an objective individual about this.

The result is that the Indians who occupy an entirely different status— These other bureaus are functional bureaus of the Government. The Indians are people who have problems, a culture that they try to preserve as well as to achieve some type of progress under our Government.

Now, to be specific in terms of this, I refer, for example, to the fact that anybody who deals with Indians, any attorney, knows that local governments are constantly reaching out to tax them. People look and they say, "Well, why shouldn't the Indians pay taxes?"

Well, Indians pay taxes like anybody else, but with respect to this trust that the United States has set up, the United States Supreme Court in *United States v. Rickart* said, "This is clearly exempt. You cannot tax this. Not even the Congress can change it."

So if you have a local county or city or State trying to infringe upon that, trying to gain revenue, which is a legitimate objective of theirs, and trying to gain it indirectly when they know directly they can't, Indians become alarmed. This happened in Palm Springs, California, with the possessory interest tax case. It has happened in other areas where you find—even starting in Arizona and it is happening now in New Mexico—where the local governments are endeavoring to regulate the use of the trust land by zoning and other types of requirements.

Now, you could say: "Well, should the Indians be permitted to go free?" The point is this is what the trust provides. The

United States Government itself has this type of immunity, and the Congress has seen fit to say to the Indians, "Look, we held you back for years and years. We are now trying to give you some type of economic edge, and we are trying to let you be self-determiners in terms of your destiny."

Now, the specifics I mentioned, Mr. Powell, to illustrate this. The Secretary has a duty to present aggressively the case for Indians. The President said this in his speech in July 1970.

I hold here the brief that was filed in the *Eagle River* case. In that case, which affects Indians all over the United States, you had a question raised under Title 43, section 666 of the United States Code regarding immunity from suit. One thing that we wanted to make clear was that if the United States wanted to waive its immunity from a lawsuit and be sued in State courts, fine. But as a trustee they couldn't waive that right unless Congress saw fit to do it in an action where Indians were involved.

We asked the Department of Interior to make this position known to the Department of Justice so they could tell the Supreme Court in the opinion to make sure that nobody would turn around and say, "Now we can sue the Indians." Promises were given to Indians all over the country that this would happen. Telegrams went in. Letters came back. They are part of this document.

The fact remains that the case went to judgment, the United States Supreme Court decided against the United States, but the United States never presented the Indian position. A small footnote was in the brief.

We jumped up and down on that. We made all kinds of noise afterwards.

There have been other instances since that time where the United States with respect to the tax case, the possessory interest tax case, went right to the door of the Supreme Court. A petition for *certiorari* was filed. It takes four votes. The Solicitor General was asked, "Please give the opinion of the United States as to whether or not the case is important enough to be heard."

The Solicitor General said he didn't think so because 30 years ago he had been in the Department of Justice and it was his opinion that the law on that question was settled. Now, this was not on the merits, bear in mind. This was simply, "Will the Indians be heard?"

The Secretary of the Interior promised—and I have got the documentation of that—that a separate statement would be filed setting forth the Indian position if we would file another

petition. The other petition was filed. The separate statement was never filed. And the case was denied.

The result is we have to start all over again. This is expensive for the Indians. It takes years to get to the Supreme Court.

We have the same type of situation on the Rio Grande where we have as a practical matter the Indians asking the United States to get in and obtain for them a day in court. The United States, on the other hand, has refused to do that with respect to Santo Domingo and San Felipe. That's an issue before the tenth circuit now. They will decide it.

The only thing I am alluding to is the very fact that again the trustee, who should be carrying the ball for the Indians, isn't doing it because of the inherent conflict of interest.

Reclamation is concerned with the San Juan-Chama project. Other agencies are. And this leaves the Indians out there wondering again, floundering, and the only thought I have, very sincerely, is that the only way you are ever going to correct this is you are going to have to remove the Bureau of Indian Affairs completely from the Department of Interior.

It's going to have to be removed. I would go further by saying it should not be put under another department but it should be an independent agency responsible to the executive branch of the Government. If you do this, then I believe you might have the aggressive assertion of Indian rights which has been lacking now for over a century.

MR. POWELL. I thank you. I have no further questions.

I just simply would say with respect to that last question about whether the Santo Domingo should be in the suit, there are two points of view on that. I don't think we are in position to make a judgment.

MR. SIMPSON. Mr. Powell, I would say this: Every lawsuit has two points of view—

MR. POWELL. Okay.

MR. SIMPSON. —and I am simply giving you my point of view.

MR. POWELL. Okay. On the issue of conflict, no question. I agree with you.

No further questions.

COMMISSIONER RANKIN. Commissioner Mitchell?

COMMISSIONER MITCHELL. No questions.

COMMISSIONER RANKIN. Mr. Buggs?

MR. BUGGS. No questions.

COMMISSIONER RANKIN. I'd like to ask one question. You are an advocate, aren't you?

MR. SIMPSON. Yes, I am.

COMMISSIONER RANKIN. Now, then, you want relief. Isn't that correct?

MR. SIMPSON. That's correct.

COMMISSIONER RANKIN. Do you believe you are going to get your relief through legal action in the courts? Through going to Congress? And you just say administratively there is not much chance as long as powers are divided this way. Then are you sure that it's in the courts where you will get relief or is that the best opportunity for relief?

MR. SIMPSON. Mr. Rankin, I am one of those people who, not being too good with a rifle, go hunting generally with a double-barreled shotgun. And I feel in answer to your question that I go into the courts when I feel like and get some relief there. I go to the Congress when I think I might get some.

And I come to you gentlemen. In fact, I want to say one thing. You probably saw the paper at lunch with the headline, "Nixon Aide Seeking Ouster of U.S. Civil Rights Commission."

COMMISSIONER RANKIN. Yes, I have seen that.

MR. SIMPSON. I would say this. The most encouraging thing that has happened today is the fact that you are having a rifle or something turned at you. You must be coming up with some truth. You must be disturbing some people. And it encourages me to be here today to think you might help build some of the fires that will bring the people we don't want out into the open.

COMMISSIONER RANKIN. Well, we lack for friends it looks like. We are glad to have all the friends we can get. I can assure you of that.

But you still think the courts are the best remedy? You'd rather fire from that particular barrel of your shotgun than any other?

MR. SIMPSON. I really don't think the courts are the best remedy. I think that the legislative effort is a more effective one in most cases. But I feel where you have a court decision like *Arizona v. California* that this becomes your best vehicle if you get the facts and go to the court.

COMMISSIONER RANKIN. If it's a question of right, you'd like to go to Congress? If it's a question of law, you go to the courts? Right?

MR. SIMPSON. Exactly.

COMMISSIONER RANKIN. Thank you. Thank you very much for your testimony.

MR. SIMPSON. It's a pleasure being here.

COMMISSIONER RANKIN. You are excused.

We continue with our consideration of the problem of water rights, and I want to call Frank Tenorio, Lawrence P. Singer,

Hubert Velarde, and Domingo Montoya to the witness stand.

Will you all remain standing so I can swear you in?

[Whereupon, Messrs. Frank Tenorio, Lawrence P. Singer, Hubert Velarde, and Domingo Montoya were sworn by Commissioner Rankin and testified as follows:]

TESTIMONY OF MR. FRANK TENORIO, CHAIRMAN, WATER RIGHTS COMMITTEE, ALL INDIAN PUEBLO COUNCIL; MR. LAWRENCE P. SINGER, OFFICER, COUNCIL OF SANTA CLARA PUEBLO; MR. HUBERT VELARDE, PRESIDENT, JICARILLA APACHE TRIBE; AND MR. DOMINGO MONTOYA, MEMBER, SANDIA PUEBLO COUNCIL AND SIX MIDDLE RIO GRANDE PUEBLO IRRIGATION COMMITTEE

COMMISSIONER RANKIN. Please be seated.

Mr. Powell.

MR. POWELL. Let the record reflect that Mr. Simpson is on the platform and appearing as counsel to one or more of the witnesses.

Beginning with Mr. Tenorio on my left, would you each please state your name, tribal affiliation, and occupation?

MR. TENORIO. My name is Frank Tenorio. I am a Pueblo Indian from the Pueblo San Felipe, and I am employed by the Bureau of Indian Affairs as a training instructor, and I hold a title of the Chairman of the Water Rights Committee with All Indian Pueblo Council that represents the 19 tribes in New Mexico.

MR. VELARDE. I am Hubert Velarde, and I represent the Jicarilla Apache Tribe. I have been President of the tribe since August.

MR. MONTOYA. My name is Domingo Montoya. I am a member of the Sandia Pueblo Council, also a member of the Six Middle Rio Grande Pueblo Irrigation Committee.

MR. SINGER. My name is Lawrence Singer. I am an officer in the Council of Santa Clara Pueblo. I hold a title of interpreter. I have served as Lieutenant Governor and as a representative in that pueblo.

COMMISSIONER RANKIN. Thank you very much.

MR. POWELL. Mr. Tenorio, how long have you been involved in the area of land and water use and in what positions? You have given us the positions. How long have you been involved in the area of land and water use?

MR. TENORIO. I became involved in that area in 1952 first with the San Felipe Tribe when I became an interpreter, and I served on the Six Middle Rio Grande Conservancy District Irrigation Committee, of which San Felipe is a member. And since then my contact with the tribe as a spokesman and as a governor of the tribe led me— Or I was involved very, very closely with the subject.

MR. POWELL. Mr. Tenorio, in your view, why are the Pueblo tribes concerned about protection of their water resources now?

MR. TENORIO. Well, obviously, people become concerned when activities surrounding your immediate vicinity becomes a rat race. And in our case the Pueblo San Felipe is located right in the middle of the district, and we see developments going on in Albuquerque, we see developments going on above the river that denotes to us definite and real concern in that we know, we hear, that the waters of the Rio Grande is overappropriated, and yet development seems to go on unchecked.

We want to know where we stand in this particular situation as far as water is concerned. And our endeavors to seek some answers is the reason for our concern.

MR. POWELL. Mr. Simpson, would you point on the map there to where the Pueblo tribes are located? The development below them in Albuquerque to the south. And he says the development above them.

[Mr. Simpson indicated on map.]

MR. POWELL. Mr. Tenorio, you have expressed concern about the Middle Rio Grande Conservancy District of 1928. Please explain why the agreement was made.

MR. TENORIO. Well, we heard in detail and in depth Mr. Simpson's concern as far as what prevailed. As far as the Pueblo San Felipe is concerned, we cannot understand why our trustee, the United States Government—within the irrigation district, the Six Middle Rio Grande Conservancy District—to have two colors of title as far as water is concerned where we have had a precedent set via the *Winters* doctrine.

I say this in this way: that all the pueblos of the Six Middle Rio Grande Conservancy District know that 8,000 acres is considered owned land and prior and paramount rights to water to that lands is recognized. And for an additional 15,000 acres classed it as same as district lands. There is two different definitions.

MR. POWELL. So that 8,000 acres of Indian-owned lands get the rights afforded under law, and 15,000 acres get lesser rights—

MR. TENORIO. Right.

MR. POWELL. —which you think are not sufficient to meet what Indians are entitled to?

MR. TENORIO. Well, I feel that the trustee in its obligation to us did not fully press or fully seek out what, say, belongs to us. It is within the reservation. It is within the reservations that

these lands are located. And certainly the *Winters* doctrine should apply or would apply in this case.

MR. POWELL. Mr. Tenorio, have there been recent efforts by the Bureau of Indian Affairs to bring about studies to help the Pueblo tribes plan and protect their water resource use?

MR. TENORIO. At the request of the tribes in 1969—1965—when Mr. Montoya here was chairman of All Indian Pueblo Council, attempts were initiated at that time to get the Government to make studies. And it wasn't until 1970 when Commissioner Bruce came out here and when we pressured, when the tribal governments pressured the Bureau of Indian Affairs to conduct those studies that an attempt was made. This was in 1970.

MR. POWELL. You mentioned a 1965 resolution. Is there a copy of that resolution there?

MR. MONTOYA. Yes.

MR. POWELL. May we have that for the record? You may want to refer to it.

Mr. Chairman, I ask that that resolution be entered as a part of the record.

COMMISSIONER RANKIN. So ordered.

[The document referred to was marked as Exhibit No. 13 and received in evidence.]

MR. MONTOYA. I am very sorry that our Xerox machine is very poor, I guess, and it's very hard to read.

MR. POWELL. You can hold onto it now. We will get it later.

Mr. Montoya, will you tell us what experience you have had with regard to the water right concerns of Pueblo tribes?

MR. MONTOYA. I have been a member of the Six Middle Rio Grande Pueblo Irrigation Committee since the early 1940's when the committee first was incepted. There was only three members at this when we first started. There are still two of us of the original members. Diego Aberta, still our chairman, was chairman at the inception, and I was a member then.

Since then each pueblo in the course of years have named a member to be a member of the committee.

But early in the 1940's, I don't know whether you people know that there was some litigation done or tried to get litigation for Pueblo Indian water rights between Texas, New Mexico, and Colorado—the compact.

Exactly what happened I'm not going to try to tell you, but it failed anyway. It didn't go on to court. I think Mr. Simpson could tell you that if you wanted to know this.

MR. POWELL. You mentioned—

MR. MONTOYA. I have been chairman— I was chairman of the All Indian Pueblo Council from 1965 through 1970. That

was one of my first problems came up with. I have been concerned because I am a farmer. I am concerned with the water rights of the pueblo.

My pueblo has plenty of land for a good number of our Indian boys to farm. But if the water is going to be taken from us, like I believe it is being done now, by the development of the non-Indian area all around the reservation— And I think this is happening all through, up and down the Rio Grande. I think it is happening around Los Alamos, around Santa Fe. I think it's happening between here and the Pueblo of Santo Domingo, Cochiti.

We see developments. Yet the Indian land itself is undeveloped. So much of it is undeveloped. And the land that has been developed by the Bureau of Indian Affairs, put into farming situation where that you can farm it economically, level, credit to Indian people is very harsh.

MR. POWELL. What did your 1965 resolution ask for? What does it say? What relief did you request?

MR. MONTOYA. "Whereas the All Indian Pueblo Council has learned that the State of New Mexico"—

MR. POWELL. You don't have to read it if you remember it.

MR. MONTOYA. —"acting by and through the State Engineer is contemplating initiating court action before the 1st of January 1966 seeking to adjudicate the nature and extent of water rights on certain of the Indian pueblos"— See, it's only on certain of the Indian pueblos. This we want you to understand.

—"whereas the All Indian Pueblo Council is very concerned with protecting the water rights of all of the pueblos in New Mexico because of the immediate relationship between their present livelihood and their future economic development and life; it is therefore resolved that the Bureau of Indian Affairs and the Commissioner, Philleo Nash, and the Department of the Interior and its Secretary, the Honorable Stewart L. Udall, be requested to do everything possible to make available competent legal and engineering assistance to assist on a full-scale basis to collect, concentrate, and analyze all available information in regards to New Mexico pueblo water rights."

It's awful hard to read.

MR. POWELL. What reply did the Government give to this resolution? What response did you get?

MR. MONTOYA. We never got a reply. We never got a reply, and up until Bruce came— We began writing him again on this, and we made trips.

MR. POWELL. Do you have any idea why the Government didn't do anything in those intervening 5 years?

MR. MONTOYA. Well, the way I see things, I think the

attorneys that were assigned by the Justice Department to represent Indians at BIA level, there was a conflict among themselves. The Justice Department would not allow certain lawyers, certain attorneys, to come out here and do the work or help the Indian get ready for a suit.

MR. POWELL. You mentioned the problem of farming, that you are a famer. I take it there are other pueblos who are interested in farming. There are certain kinds of things that need to be done in connection with becoming able to put the land to the best use I take it. Is the BIA supposed to provide assistance in that regard?

MR. MONTOYA. Yes.

MR. POWELL. Does it provide such assistance?

MR. MONTOYA. There has been quite a bit of land that has been put into farming shape. I mean land has been leveled, brush has been cleared, trees have been cleared, irrigation ditches have been laid out to farm the land area, but credit is very harsh in many of the Indian pueblos.

I want you to understand that not until 1949 that the credit from the FHA [Farmers Home Administration] was extended. I tried to be a farmer since 1929.

MR. POWELL. I see. You have sufficient water though to meet your farming needs?

MR. MONTOYA. We have enough water at the present for the farming area which is— I would say that the water that we have is adequate for the farm that we now have in times when there is water.

MR. POWELL. You mentioned the problem of credit. You say that the—

MR. MONTOYA. Credit. I would like to explain this. Unless the system has changed or the rulings by the loaning bureau, unless it has been changed— It probably is the same, which I call very harsh. By that I mean that certain amount of that money— And let's take for instance I borrow \$8,000 to start a farming. I have to categorize that money, which I don't mind doing, but I don't think anybody else would.

Buying seed— Farm operation is buying fuel for your tractor, oil, labor, repair on your equipment, buying equipment, stuff like that. Well, when it comes right down to it, a farmer has to pay this. Many of this now, farm operation, labor, seed, that all runs into money, and that money has to be paid back the first year.

What I have been asking for is a longer time to pay for that money. I have talked to people, and many times once they take the floor I know they won't let you talk no more. They tell you,

"We can't afford to lend you any money cheaper than we are lending it to . . ." That's not what we're asking for. We're not asking for cheap rate of interest. We are asking for a longer time to pay the money.

I think that it can be done. I am very concerned.

COMMISSIONER MITCHELL. Are you asking for that money from banks or from a Federal agency or—

MR. MONTROYA. Well, at the time that I tried to get money from the banks I was told, "What have you for collateral?" I couldn't get anything.

COMMISSIONER MITCHELL. Is there a guaranteed loan program of any kind that would—

MR. MONTROYA. They won't take land as a collateral.

COMMISSIONER MITCHELL. The Government is lending money to college students, and they don't even have a sheepskin as collateral.

MR. MONTROYA. I think things have changed.

COMMISSIONER MITCHELL. You find it easier now?

MR. MONTROYA. Things have changed, yes.

MR. POWELL. Mr. Montoya, what has the All Indian Pueblo Council done recently to help bring a determination of pueblo water rights and water usage?

Mr. Tenorio, did you want to comment on that? What has the All Indian Pueblo Council done?

MR. TENORIO. Since a request was made to Commissioner Bruce, attempts were made to initiate a water studies program, and they were pretty generous, I think, at that time. This was about 5 years ago—3 years ago. They gave us \$40,000 for the 19 pueblos.

And that was the extent of the assistance that we got, although they opened a water rights—natural resources—office here in Albuquerque, but with the idea that staffing would be complete in short order because this was a program of such an emergency nature.

MR. POWELL. You got \$40,000 5 years ago and—

MR. TENORIO. Three years ago.

MR. POWELL. —there is a water rights office here in the Albuquerque office and there is a new water rights office in the Department of Interior?

MR. TENORIO. Yes.

MR. POWELL. Have you gotten any more financial assistance or technical assistance from either office?

MR. TENORIO. A promise.

MR. POWELL. You have been promised?

MR. TENORIO. We were promised \$150,000 to ^fcarry on the studies.

COMMISSIONER MITCHELL. Mr. Powell, this is not a field in which I have much competence so I'm going to have to ask you an occasional question if you don't mind.

MR. POWELL. No, not at all.

COMMISSIONER MITCHELL. When Mr. Montoya says that the All Pueblo Council passed a resolution in 1965 asking the Government to help them protect their own water rights, were they asking their own trustee?

MR. POWELL. Yes, that's in effect what they were doing.

COMMISSIONER MITCHELL. Is not a trustee obligated to respond to his client if they ask him about something he holds in trust for them?

MR. POWELL. Yes.

COMMISSIONER MITCHELL. Does the trustee have the right to decide, "Well, I'm not going to answer the mail from a client"?

MR. POWELL. Certainly not, Commissioner Mitchell.

COMMISSIONER MITCHELL. Well, what was their recourse at that time?

MR. POWELL. Well, there is some precedent as I understand it—Mr. Simpson can help me—where the beneficiary can go to court on its own. The tribe in this case can go to court on its own to protect interests which the trustee is not protecting.

The problem here, of course, is that tribes who do this often don't have the money.

COMMISSIONER MITCHELL. Is this an irrevocable trust? Can it be—

MR. POWELL. By the nature of things, it is not irrevocable in that the Congress could some day terminate—

COMMISSIONER MITCHELL. But the party for whom the trust is being held has no right to revoke the trust?

MR. POWELL. No, he doesn't have the power. He could petition Congress to revoke the trust, but I think we ought to note here that the trustee, the executive department, which discharges that obligation, doesn't have the power to terminate or to revise. Only Congress has that power.

COMMISSIONER MITCHELL. See, what interests me is I recognize other problems such as credit and such as potential use of land for farming, but we are looking at this from the point of view of equal opportunity under the law, equal treatment under the law, and the rights of these people to use water that clearly belongs to them and is held in trust for them, and the obligation of the trustee to respond to them as it would to any other client. And it's there, I think, that we have an issue.

MR. POWELL. I agree.

Okay. Mr. Singer, where is your reservation located?

MR. SINGER. It's about 90 miles north of here.

MR. POWELL. That is which reservation again?

MR. SINGER. Santa Clara Indian Reservation.

MR. POWELL. Santa Clara? Can we point to that, Mr. Simpson, on the map? That is north of Albuquerque?

MR. SINGER. That's correct.

MR. POWELL. What settlements have been made on or around your lands, your tribal lands?

MR. SINGER. I have a prepared statement here, and I'd like to read a portion of it before I—

MR. POWELL. If it doesn't take too much time.

MR. SINGER. No, it won't take too much.

MR. POWELL. I hope it bears really on the point here.

MR. SINGER. Mr. Chairman, Commission members, first, I want to welcome you to the land of enchantment, home of the Pueblo Indians, the Navajo, Apache Tribes, the Ute Tribe. In this particular area you are visiting antedates U.S. history. It's rich in history and deep in legal debate. .

And I want to answer your question now.

MR. POWELL. Thank you.

MR. SINGER. As I have said here, it's rich in history. Long before the U.S. history began, the Spaniard came into this area, and as some attorneys would say, this is where year one began.

MR. POWELL. Your reservation is, I take it, near Espanola?

MR. SINGER. Yes, sir.

MR. POWELL. Would you tell us something about the settlements that have been made on your lands?

MR. SINGER. Could I read my statement here and then maybe you can get an idea as to what I have—

MR. POWELL. Do you think it would be helpful?

MR. SINGER. All right. The Santa Clara Council has a vital interest in the area I am about to testify, which includes seven areas. Our concern has been voiced on numerous occasions. We reserve the right to other areas we may omit here.

Examples:

Number one, King Philip of Spain in Madrid, March 16, 1643, promulgated a statute, law 8, title 12, book 4, *De recopilación de Indias*. It may be available in the congressional library. The section is as follows:

"We ordain that the sale, improvement and arrangement of land shall be made with regard to the Indians that there may be left to them all the lands which may belong to them even

more as well to individuals as to the community; also waters and aqueducts may have been made or other improvements whereby through their personal industry they may have been enhanced shall be in the first place to reserve for them and in no event shall they sell or alienate them, and the judges whose business shall specify the Indians that they may find on that lands and the lands that may remain to each one of the tributaries"—

MR. POWELL. Mr. Singer, pardon me. May I interrupt for a moment? That seems to go to the historical legal right to your land. I don't think really that's in dispute.

MR. SINGER. All right.

MR. POWELL. We would be glad to take that and make it part of the record.

[The document referred to was marked as Exhibit No. 14 and received in evidence.]

MR. POWELL. I wonder, though, if I may get to what I think, based on our conversation with you earlier, is the problem. You have rights to the use of water, and we gather that there's been a number of invasions of that water, the drilling of wells, the development of towns, the increase in population, and that sort of thing. Is that true?

MR. SINGER. All right. That's the seven areas that we are concerned in, and I will read them off one at a time.

Santa Clara grant located in Rio Arriba and Santa Fe County. It's checkerboarded. It's a checkerboarded area with P.C. [private claims] claims extinguished during the 1924 Land Support Act.

In this area we want the State engineer to stop approving and granting permits for wells within the exterior boundaries and lands contiguous and adjacent. The reason for this is the underground basin and surface rights have not been adjudicated. We feel he is preempting our rights, irrigating without proper authority, usurping the court's rights. We want the Bureau of Indian Affairs, the people charged with responsibility, to monitor past, present, and future permits given by the State engineer in this area.

Number two, Executive order reservation located in Rio Arriba, Sandoval Counties, especially the lands which are immediately adjacent to this area, for the same reason as above stated, and, of course, primarily a portion of the watershed is our main concern which now lies just outside our jurisdiction.

Number three—

MR. POWELL. Mr. Singer, we are very interested in knowing

what your concerns are. We want to make it a part of the record. But we want to focus on those concerns over which this Commission has some jurisdiction. Some of the things that you are going into we don't have the jurisdiction. We would be glad to transmit whatever concerns you have, but we'd like to focus on the subject before us which has to do with water rights.

MR. SINGER. Well, this is dealing with water rights. That's why I came. I brought myself forward here so you people can hear me out.

MR. POWELL. All right. Let's hear them. I'm sorry.

MR. SINGER. Diversion of water. That's number three. Since the Rio Grande is an interstate and international stream, so much interest is generated, and there has been diversions of water from the Rio Grande and the Santa Clara Creek. These are waters that the United States is obligated to protect for us.

Number four, transfer of water rights. We strongly oppose this procedure and relocating in our area. Reasons: because of the availability of water, density of population, economic growth, quality of water, land subdivision development, geographic location and the amenities that go along with it, the demands that are being put upon the water.

And number five, because of the policy of aggrandizement pursued by the city of Espanola in annexing property, number one, initially within the exterior boundary of Santa Clara grant; presently, it has now extended its jurisdiction beyond our exterior boundary and is now obligated to serve this new people and will start exporting the water and importing sewage water.

Number six, offers of judgment. We are opposed to this method at this initial phase of the court proceedings. Reasons: Number one, we realize that if the State and non-Indians reach satisfaction to the offer, they will join forces to contest that mutual agreement. Number two, we feel we are placed at a disadvantage because it gives efficacy and it will be difficult for us to discredit and form an effective argument. Number three, we reserve every opportunity to challenge it if this reservation is not pleaded for by our trustee.

Number seven, we claim that this God-given water for the pueblo and its people for domestic, commercial, industrial, recreational, livestock, wildlife, medicinal purposes, farming, forest operation, and when certain ceremony is performed it becomes consecrated water to bless our people, homes, villages, crops, and all things that the Good Lord has given us dominion over.

MR. POWELL. Thank you very much.

Mr. Velarde, would you describe the Navajo Stream as it was until 2 or 3 years ago in regard to its flow and supply of water to your reservation?

MR. VELARDE. Well, this river I guess reduced— What we are really concerned with is reduced flow. It has dropped about a foot and a half, I guess. And this is the only river that crosses our reservation.

MR. POWELL. It has dropped a foot and a half?

MR. VELARDE. Yes.

MR. POWELL. How has the San Juan-Chama diversion project affected the stream flow of the Navajo as it crosses your reservation?

MR. VELARDE. It really reduced the river.

MR. POWELL. At one time, as I understand it from our reports, there was a full flow in the Navajo but now it's reduced to a trickle? Is that correct? Or is it just reduced by a foot and a half? There is still enough water for your use?

MR. VELARDE. There is still some water in there yet, quite a bit.

MR. POWELL. But it has had an adverse effect?

MR. VELARDE. It has reduced quite a bit.

MR. POWELL. Mr. Velarde, was your tribe consulted when plans to build the San Juan-Chama diversion were drawn up?

MR. VELARDE. Yes, I guess they were consulted at that time, and the council asked for a study, and which was never answered by the BIA.

MR. POWELL. You asked for a study to determine your water needs?

MR. VELARDE. Right.

MR. POWELL. How long ago was that request made?

MR. VELARDE. Well, I think according to our research I done, I think that was a letter that was dated back in 1952, but I do have a letter here that is dated 1958.

MR. POWELL. Okay. May I have that for the record?

And your recollection is, request was made as long as 20 years ago for such study?

MR. VELARDE. Yes.

MR. POWELL. And you have got no response?

MR. VELARDE. No.

MR. POWELL. No funds have been provided even today?

MR. VELARDE. No, sir.

Well, could I read this letter with your permission?

MR. POWELL. Yes.

MR. VELARDE. Okay. This is dated February 28, 1958, and it's to Mr. John B. Keliiaa, Superintendent, Jicarilla Agency,

Dulce, New Mexico.

"Dear Mr. Keliiaa:

"Some time ago the Jicarilla Council requested BIA to take necessary action to protect the water rights of the tribe in San Juan Basin. There has been some work and a number of conferences on this matter, but as yet we are not informed of any definite action being taken with the proper authorities to secure allocation of any specified amount of water to the tribe.

"I believe that there has been some misunderstanding of the immediate problem. The first thing that must be done is to determine the amount of water which could be applied to the beneficial use for the tribe which at present flows into the San Juan Basin. A small quantity of water has been diverted from Navajo River for the use of the Government and the tribe, and a small quantity is being impounded in artificial lakes.

"It is my information, however, that the majority of the water that could be used beneficially on the reservation is not impounded or used at the present time.

"In order to take necessary action to protect the interests of the tribe, we must know how many acres of land could be irrigated from the water source owned or across the reservation and at a cost that could be excessive based upon the reasonable expectation of returns.

"If the BIA has this information it should be made available to the tribe. If such information has not been obtained, the tribe should be informed what should be done to determine the amount of acres of land that could be irrigated and the amount of water that could be beneficially used on the reservation from the surface water now flowing into the San Juan Basin.

"If the BIA does not have this information, does not have the funds or personnel to obtain it, it is my opinion that the tribe should employ a qualified person for this purpose. The immediate problem is to make the survey and cost estimate necessary to determine the amount of water that can be beneficially used on the reservation. When this is done, the water rights of the tribe can be presented to the officials and department having control of allocation of the San Juan Basin water.

"Sincerely yours, Roy T. Mobley."

COMMISSIONER MITCHELL. Mr. Chairman, can we have that letter and Mr. Singer's statement he was reading from? I think Mr. Montoya read something too. Can we get those for the record?

MR. SINGER. The resolution I have here and a clipping, a newspaper clipping.

MR. POWELL. We will take that all for the record, what you read and what you described. The resolution we have already entered in the record. He offered that 1958 letter to the record. That was a letter from whom to whom?

MR. VELARDE. This was a letter from our attorney to the superintendent at the Jicarilla agency.

[The documents referred to were marked as Exhibit No. 15 and received in evidence.]

MR. POWELL. Mr. Chairman, this is a theme. What they're asking for in that letter is an inventory of their rights, rights to the use of water.

Did you get any answer to that?

MR. VELARDE. No, sir.

MR. POWELL. Mr. Velarde, are studies being made now to determine your water resources and needs and determine what action should be taken to protect them?

MR. VELARDE. Yes, sir. We are having a study made right now. Unfortunately— We will have a report tomorrow. They are going to make their report to us tomorrow.

MR. POWELL. Is that under Federal funds? Are Federal funds being provided for that?

MR. VELARDE. No, this was made available through the American Historical Society, and they got the funds through the Ford Foundation.

MR. POWELL. As I understand it, you have made request to your trustee to have things done which the trustee has responsibility to do and you haven't heard from them, but you have private funding. Is that it?

MR. VELARDE. That's right.

MR. POWELL. Is the Government presently involved in helping you determine your needs, Mr. Velarde?

MR. VELARDE. No.

MR. POWELL. I have no further questions, Mr. Chairman.

COMMISSIONER RANKIN. Commissioner Mitchell?

COMMISSIONER MITCHELL. No questions.

COMMISSIONER RANKIN. Mr. Buggs?

MR. BUGGS. Did the tribes ever ask the superintendent to whom this letter was directed in person why he didn't answer it?

MR. VELARDE. I don't know. Like I said earlier, I just took over this chairmanship, and before they had a different administration. I don't know just how far they went into it.

MR. BUGGS. Mr. Montoya, would you know?

MR. MONTOYA. What was the question, please?

MR. BUGGS. The question was since that letter was not

answered in writing, was any representation ever made to the superintendent to whom that letter was addressed—

MR. VELARDE. He's from a different tribe.

MR. BUGGS. It's a different tribe? I'm sorry.

MR. MONTOYA. We are different tribes.

MR. BUGGS. But you don't know whether verbally or any other way that any other representation was made to him?

MR. VELARDE. No.

COMMISSIONER RANKIN. Did you want to make another statement, Mr. Montoya?

MR. MONTOYA. I have a question that I would like to ask the Commission, the members here. My question is that land, non-Indian land, is being developed all around the Indian country, around Isleta, Sandia, and on up the line. There have been several tribes that have made application for funding for an industrial park. There are good areas for industrial parks on many of the Indian lands.

Now, the one I'm referring to mostly is the one that my tribe has been doing. We are within a mile from the city limits of Albuquerque—our reservation. We border, just about border, the city of Albuquerque. And we have good land that can be developed. But we have no money to get the land ready such as industrial parks, residential areas, for sewer system, for water system, and this.

Now, I started a program when I was governor of my tribe in 1968 for this industrial park. We are still at it. We had a meeting with a man that represents EDA [Economic Development Administration] not long ago, and all that I got out of that meeting was that he hadn't taken us very sincerely, and we had been talking to these people that long.

Now, is there a force, a mighty force, somewhere directing these people that run, that are head of these organizations, the EDA and all the other agencies that have come to be in the last few years, OEO and all of this, "Let the Indians know that these programs exist. When they get interested, hold them, delay them, use the delaying action"? Is somebody giving that order, "Let us take their water"—especially around Albuquerque where water is very important? Land is no good without water. I think all of you people know this. Now, this is only what I have come up with, that somebody up high is instructing.

COMMISSIONER RANKIN. Does anybody have the answer to his question? I'm sure I haven't.

COMMISSIONER MITCHELL. Generally I think my colleagues would agree with me as we look into these kinds of matters we

don't find a single villain. We find these things:

One, that people who are supposed to look out for Indians and other minority rights don't have any influence on the policies of the bureaus and departments with which they are associated. Often they are just there because they have to have them and they are just fronts. They have nothing to say.

Sometimes there is genuine bigotry and racism, and within a department a determination to see that all the good things happen to the majority groups.

Sometimes there is just slothfulness, sloppiness, carelessness, stupidity. Someone who is responsible for getting public relations out gets the Secretary's picture in the paper, but forgets to notify the Indians that there is a program that they should be applying for.

And sometimes you have this terrible crushing bureaucracy which, like the maze that the rat runs around in, tends to exhaust you so that by the time you get to the cheese you have lost your appetite.

And it's a combination of those things and not one person sitting there setting a trap.

COMMISSIONER RANKIN. There is one additional problem. That's the problem of distance. Sometimes they think it's so far away it's hard to get them interested in that problem.

MR. BUGGS. I was about to ask Mr. Simpson whether or not it appeared there was some kind of conspiracy—and that's what Mr. Montoya is talking about—in connection with the fact that there are obviously valuable lands owned by Indians, and if you want to get it, the thing to do is starve people out so that they can't use it so they finally give it away out of frustration.

Mr. Simpson, in all of the involvements that you have had, what would you say about the reason why action or no action is taken in connection with the problems of Indians with respect to water and land?

MR. SIMPSON. In response, I would say that Mr. Montoya definitely puts his finger on something that I feel, and I will mention it, very succinctly. I don't believe, as Mr. Mitchell pointed out, that you have a situation where there is one villain. I don't believe it is a situation where you have one party, Democrats or Republicans, because I have found that the Indians have suffered under both types of philosophies. And while I have serviced them, you have had both.

But I do believe there are people with economic interest which they cultivate in every way they can which will lead to certain policies, and they might be the last people in the world

to say, "Don't help the Indians," but they first wish to help themselves so they support policies which lead to roadblocks as far as Indian development is concerned.

I have seen this when leases were attempted, good leases that would have developed Indian land. And I have watched the fear of bureaucrats, fear that they might make a mistake if they approved it, cause them to say, "Let's not do anything." That's one element. And it always makes the Indian wonder.

And, secondly, though, I have watched people in Washington who develop a very friendly smile, who listen to the Indians at great length, tell them they are going to conduct a study. The Indians go home, and they promptly forget the study because they are so engrossed in pushing the policies, the feelings, the programs that are meaningful to them as opposed to addressing themselves to the responsibilities that go with being a trustee.

COMMISSIONER RANKIN. Thank you, Mr. Simpson.

If this is all the questions, thank you all for your testimony here and your help in trying to solve this most difficult problem.

MR. POWELL. Will the clerk pick up those papers?

MR. SINGER. Can I have this thing typed and then mail it to you? I think it would be better.

MR. POWELL. All right.

COMMISSIONER RANKIN. I am going to declare a 5-minute recess as an act of mercy to the stenographer over here. He has been working steadily all day, and I have been feeling for him lately. So I'm going to give him a 5-minute break if it's all right with you.

[Whereupon, a recess was taken.]

COMMISSIONER RANKIN. Will the hearing come to order, please?

As was mentioned previously, we are concerned not only with water rights at this hearing in New Mexico but also water rights in Arizona, so we are going to take up this topic immediately, and I ask Veronica Murdock and Paul Smith to come to the witness stand.

MR. POWELL. Mr. Chairman, Ms. Murdock will be accompanied by her attorney. I think that is Mr. Simpson. Mr. Smith will be accompanied by his attorney, who is Mr. Royal Marks. And, as a courtesy, I believe that Mr. Anton Gonzales, who is Chairman of the Colorado River Indian Tribes, wants to sit up

there on the platform to accompany these witnesses. No objection.

COMMISSIONER RANKIN. No objection.

Will the witnesses please stand to be sworn?

[Whereupon, Ms. Veronica Murdock, Mr. Paul Smith, and Mr. Anton Gonzales were sworn by Commissioner Rankin and testified as follows:]

**TESTIMONY OF MS. VERONICA MURDOCK, VICE CHAIRMAN,
COLORADO RIVER INDIAN TRIBES; MR. PAUL SMITH, PRESIDENT,
SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY COUNCIL;
ACCOMPANIED BY MR. ANTON GONZALES, CHAIRMAN, COLORADO
RIVER INDIAN TRIBES**

COMMISSIONER RANKIN. Thank you. Will you be seated?

MR. POWELL. Ms. Murdock, Mr. Smith, would you each state your name, tribal affiliation, and occupation for the record?

MS. MURDOCK. Yes. My name is Veronica Murdock, and I am a Mojave member of the Colorado River Indian Tribes. I hold the position of Vice Chairman. And I am also representing the Confederation of the River Tribes along the Colorado River.

MR. POWELL. Mr. Smith?

MR. SMITH. I am Paul Smith, the President of the Salt River Pima-Maricopa Indian Community Council, also the first vice president of the Arizona Intertribal Council of Arizona, and I am speaking not only for the Salt River Indian Community but for the Gila River Pima-Maricopa Indian Community and for the Papagos.

MR. POWELL. Ms. Murdock, please identify for us the five Indian tribes of the Lower Colorado River and explain why these five tribes have joined together into a confederation.

MS. MURDOCK. Okay. The five tribes— If you would like me to point them out on the map I will have Mr. Gonzales point them out on the map.

MR. POWELL. Very good.

MS. MURDOCK. Fort Mojave Tribe, which is the most northern tribe along the Lower Colorado River.

The Colorado River Indian Tribes located in Parker, Arizona.

The Chemehuevi Tribe, which is above Colorado River Indian Tribes.

And then the Quechan Tribes located at Fort Yuma.

And the Cocopah Indian Reservation located south of them.

The confederation was formed for the economic development of the respective reservations, which we hope is the highest and best economic use, and to plan comprehensive and constructive utilization of our lawfully invaluable water rights.

We felt banding together as a confederation, putting unity into our efforts, would allow us to go make greater strides with

Federal, State, and any other agency that we may have to deal with.

MR. POWELL. Mr. Simpson earlier has described for us in general terms what the legal basis for the claims of Indians regarding water rights are. Could you briefly explain what water rights the confederated tribes claim?

MS. MURDOCK. Yes. They have their water rights under the Supreme Court decision of *Arizona v. California* and they have varying amounts. Would you like me to—

MR. POWELL. No, we can have that submitted for the record.

MS. MURDOCK. Okay. Fine.

MR. POWELL. How have the reclamation projects near Fort Mojave Reservation limited the ability of the Fort Mojave Tribe to utilize its water, Fort Mojave being one of the five confederated tribes?

MS. MURDOCK. Well, if you were familiar with the area along the river, there is a large amount of channelization along the Colorado River in that area, and the Corps of Engineers and the Bureau of Reclamation have jurisdiction over this area, and they have maintenance and jurisdiction over the structure which is a 5-foot levee, and they say that they have to maintain the integrity of the levee.

There has always been a lack of cooperation in approving— They have two major developments there or leases on the reservation, and when it comes to breaching the levee and having, say, access to the river, they are completely cut off from the river and there is no view of the river, and this is possibly one of the greatest assets of living and being close to a river is the fact that it can help you be successful in the kind of economic development that I am sure this tribe would like to pursue.

And because of the levee and of the Bureau of Reclamation coming in and channelizing— The tribe is presently involved in litigation as to title because of the exposed river bed which of course caused problems, and as I understand they are presently in a suit, Mr. Simpson?

MR. SIMPSON. Yes.

MS. MURDOCK. And we contend that the Indians have a riparian right since they own both sides of the river and when the Bureau of Reclamation came in, the river was 1,500 feet wide, and they narrowed it down to 300 feet, which left approximately 1,200 feet, 600 on each side of the river, that they control.

So they have never been helpful in trying to help the Fort Mojave Tribes to develop— In fact, they have stymied because they have not cooperated with the Fort Mojave Tribe.

MR. POWELL. As I understand it, one of the ways in which the Fort Mojave Tribe exploits its resources in this respect, land and water, is that it leases its land. Is that correct?

MS. MURDOCK. Yes, that is correct.

MR. POWELL. And you are saying that the reclamation projects and the impact of the levee has been such that it has prevented them from being able to get the best kind of leases? Is that it?

MS. MURDOCK. Yes, that's correct.

One other problem in that area is that the Bureau has really not been that responsive to many of the proposals that they have received, that the Fort Mojave Tribe has received from potential lessees. They have been very slow, and I think that possibly Mr. Simpson could give you better background in it, but I am aware that they have had much problem in getting development lessees there because of the problems they have had with getting approval of leases, and they are using absolutely none of their water right now.

And one of the bases for disapproving one of the lessees of the Bureau was that they would use too much water, which to me would be more than helpful to the tribe. It's not even using a drop of their water right. To allow them, you know, to maintain that water right. Because we maintain we have the right to long-term leasing. And the people won't be there— If we won't reap the benefits, at least our children will.

MR. POWELL. Is the Bureau of Indian Affairs supposed to provide technical assistance and financial resources to help the Indians develop their land and water?

MS. MURDOCK. Yes, that's correct. And there's been very little done at Fort Mojave.

MR. POWELL. Ms. Murdock, how has the Chemehuevi Tribe been hindered in its effort to become self-sustaining and utilize its water supply?

MS. MURDOCK. One other comment that I would like to make before we pass on from Fort Mojave is that there has been no implementation of an irrigation program there by the Bureau or by anyone, and then the fact that because of the 5-foot levee the costs of pumping the water would probably be very large. So that's another reason why they aren't using their water.

The Chemehuevi situation is something to me that's very baffling because their land, land along their river— They don't have access to the river either. And I think there's a 455-foot contour line along the reservation that was acquired by an act of Congress.

MR. POWELL. Does that mean that their land is situated

such that they don't have water rights? Or do they have water rights?

MS. MURDOCK. Yes, they do have water rights under the *Arizona v. California*, but they have been unable to utilize them plus have access to the river.

MR. POWELL. I see. Have they requested assistance from the Bureau of Indian Affairs in this regard?

MS. MURDOCK. Well, this is the funny thing. I kind of have to go through a history of that in order for you to understand.

This land was acquired for the Parker Davis Dam project from supposedly the Chemehuevi Tribe of Indians. They did have a recognized Executive order reservation. They recognized the tribe to take their land, to buy their land from them. They gave them a certain amount of money.

This money has never individually gotten to these tribes. I believe that they do have it in special account, but none of the tribes have ever been able to, to my knowledge utilize the money in any fashion either per capita payments or otherwise, and I think they are attempting to do that now.

MR. POWELL. Was that taking of land subsequent to the decision in *Arizona v. California*?

MS. MURDOCK. It was taken before. So they had an established water right after. But the fact that they recognized them as a tribe then, and they have only really been recognized as a tribe the last 3 years— They submitted their constitution and bylaws and therefore, when this metropolitan water district came in, most of the Chemehuevis migrated down to the Colorado River area, and what forces were used only our ancestors can tell you.

So they did move down, most of them, to the Colorado River Reservation and have never recognized them until they began reorganizing about 3 years ago, and I guess they are presently making strides with the Bureau of Land Management as to being able to get to the water.

But since that time they haven't had any development on their reservation whatsoever because, as I say, they were only really established about 3 years ago.

No attempts made by the Bureau to my knowledge or anyone else to organize them before that time. Yet they were an Executive order reservation.

MR. POWELL. I see.

Maybe Mr. Simpson can help me with this. *Arizona v. California* was decided in 1963?

MR. SIMPSON. 1963.

MR. POWELL. Was this Indian tribe—did it have sufficient

status at that time to be accorded water rights? She mentioned they only organized 3 years ago.

MR. SIMPSON. Answering your question directly, in 1932 you had a recognized Executive order reservation known as the Chemehuevi Reservation. You had a tribe that was recognized.

By act of Congress, July 8, 1940, the construction of Parker Dam was authorized by the Secretary. After that flooding occurred, many of the people found it so difficult they, as Ms. Murdock said, went down to Parker. Thereafter, the Bureau took the position that there were so few people who remained on the land itself that they felt it might be called an abandonment of the reservation.

And so after 1963 with *Arizona v. California*, and just here recently there has been considerable effort, and about 3 years ago finally the Chemehuevis gained recognition again as a tribe, adopted a constitution and bylaws. They are now seeking development on that reservation and are seeking to obtain the funds which were paid back in 1940 by Metropolitan Water District which have been on deposit ever since.

MR. POWELL. But in *Arizona v. California* there were rights awarded to the Chemehuevis?

MR. SIMPSON. That is correct. Specifically.

MR. POWELL. And the point here is that, notwithstanding those rights accorded under *Arizona v. California*, BIA has made no effort to assist them to exploit the rights which they have? Is that correct?

MR. SIMPSON. That is correct.

MR. POWELL. Ms. Murdock, what has been the response of the Government to the needs of the Chemehuevis in regard to their water usage requirements?

I think you have answered that.

MS. MURDOCK. Yes.

MR. POWELL. Okay. On the Colorado River Reservation, Ms. Murdock, when did efforts to develop your land and water uses begin?

MS. MURDOCK. Well, great strides were made in 1964 as far as land development because we received the right to long-term leasing. But the irrigation project started over 105 years ago.

MR. POWELL. 105 years ago?

MS. MURDOCK. 105 years ago. The irrigation project on the Colorado River Indian Reservation was not only the first irrigation project funded by Congress, it was the first Indian project, and to date it is only 50 percent completed.

MR. POWELL. And 105 years and only 50 percent completed?

MS. MURDOCK. And it is also a very inadequate system. We

have gone out and gotten additional appropriations in order to help get the system updated and extended.

MR. POWELL. I suppose this can be contrasted, can it not, with the projects built under the Bureau of Reclamation which have been built in the last 20 years? Haven't many of these projects been completed in the last 20 or 30 years?

MS. MURDOCK. I have no idea.

MR. POWELL. Mr. Simpson?

MS. MURDOCK. But I imagine there's quite a few of them.

MR. SIMPSON. Yes.

MR. POWELL. So while Bureau of Reclamation projects are completed in 5 or 10 years, projects for Indians, particularly the Colorado River Indian Tribe, takes 100 years and not yet complete?

MS. MURDOCK. That's correct.

MR. POWELL. There seems to be a tremendous difference in the attitude of the Government about implementing these projects.

MS. MURDOCK. I think Mr. Gonzales would like to make a comment.

MR. POWELL. Yes.

MR. GONZALES. I'd like to comment on that. This is one of my pet subjects when I talk about Central Arizona project. But, anyway, like Veronica Murdock stated, it has been 105 years since our irrigation system has been in, and only 50 percent of it has been done.

But, anyway, Reclamation shows that the Central Arizona project is going to become a reality, and they figure in 10 to 15 years this project will be finished and that here we sit here in the reservation 100 years-plus and our irrigation system is not complete.

Twenty million dollars—or \$2 billion—is the price of the Central Arizona project. And I can't see right now where a small project like ours is going on for 100 years and yet Central Arizona project is going to be finished in 10 or 15 years.

Thank you.

MR. POWELL. Ms. Murdock, you have expressed concern at least to our staff that recently your reservation was told by the Bureau of Reclamation that you would not receive additional electric power supplies which are necessary for the development of your resources. What has been the response of the Government to protect tribal need in this matter? Have you consulted the BIA?

MS. MURDOCK. Yes, we have. This has been an on-going problem for several years. When the Parker Davis Dam project was built, the tribe was given first and prior right to a block of

power. Since that time they have been renegeing on it. We haven't heard any response from them.

We have requested to go in and talk to them. We have passed resolutions. And, you know, it's just hard even getting an answer out of them.

We constantly harass the area office, our local people, and, of course, we know that they are making the efforts towards trying to obtain these things for us, but, you know, it's on the part of the central office or I guess the higher echelons they always pass it up to that are not moving on it.

And we definitely need a determination on this, because if this is going to be a problem in the future, well, power goes right along with the economic development or irrigation construction on the reservation. And if we don't receive this, then we are stymied again and stopped in our tracks.

MR. POWELL. The Parker Davis Dam has an impact on users of water including Indians, and when it was built there was a commitment made to you that you would have some of the power?

MS. MURDOCK. Yes.

MR. POWELL. And now they are renegeing on that commitment?

MS. MURDOCK. Yes, and they are saying, well, they will put in an application or whatever their procedure—the tribe will have to go through the regular procedures.

MR. POWELL. What about your trustees at BIA? What is its attitude about this?

MS. MURDOCK. Well, this is how we are trying to work our request through the BIA. I believe it's in the Secretary of Interior office now. At least this is where we have directed, you know, most of our inquiries as it goes.

I mean we had a hard time getting Harrison Loesch to sign a letter to that effect. I guess they are in support of us receiving the power allocation because they did sign a letter. But, you know, we haven't heard from the Bureau of Reclamation or anyone.

MR. POWELL. Ms. Murdock, in regard to the Quechan Tribe, have they obtained the necessary help to utilize their water resources?

MS. MURDOCK. Well, they are in a peculiar situation also. We all seem to have our differences in our irrigation systems and what help we do receive.

The Quechan Tribe irrigation system is under the Bard project, and it's an irrigation system operated by the Bureau of Reclamation.

MR. POWELL. This is the Bard project? What is that again?

MS. MURDOCK. Well, just the Bard irrigation project, I guess it is.

MR. POWELL. I see.

MS. MURDOCK. And as I understand it, the tribe expresses lack of cooperation on behalf of Bureau of Reclamation in delivering water and whatnot to them.

And then the other major problem, I think, would be the salinity content of the water, and it's 890 parts per million, and I believe the public health average is something like 500 parts per million that is harmful to crops. This hurts the crops, the soil, and just everything, you know, that has to do with agriculture.

So that seems to be their major problem there. And they are using a majority of their water allocation now.

MR. SIMPSON, is there anything you'd like to add to that?

MR. SIMPSON. I don't believe so.

MR. POWELL. Does the Cocopah Tribe face a similar problem?

MS. MURDOCK. Yes, they do. They have I believe it's a private system out near their reservation. Their reservation, of course, is split. It's in two different areas. And I would imagine that in order to implement any kind of type of an irrigation system there that they would have to use a pumping method which, of course, would be expensive to them.

And they have no land development or water development whatsoever on the reservation. And I think that, you know, water is being pumped from that point. It is believed it is pumped directly from the Cocopah water basin, the fresh water that is being delivered to Mexico.

MR. POWELL. Has the Government provided any assistance to them?

MS. MURDOCK. Well, if they have, it's not— You can't see it.

MR. POWELL. Have any studies been made to facilitate the confederated tribes in developing their resources?

MS. MURDOCK. No. This is one of the major reasons why the tribes did confederate also because there is a lack of studies, and with the threat of Central Arizona project or what we feel is a threat, you know, we had to band together to try to get monies and incorporate so we could try to get monies from, hopefully, all areas to help us implement water inventories and other studies that the tribes will need in obtaining and retaining their water rights.

MR. POWELL. But there is one confederated tribe study, is there not?

MS. MURDOCK. Yes, we have one compiled now. This is part of—

MR. POWELL. Did that come about by virtue of Government funding?

MS. MURDOCK. Yes. This was by the Bureau of Indian Affairs. We approached the Water Rights Office, and they didn't have any money, and we felt we were one of the most important projects there on the reservation because of our position, because nothing had been done, and because of the threat of the Central Arizona project.

But everybody assured us that it would be no problem, that even though they were taking water that wasn't theirs, that our water rights wouldn't be hurt.

MR. POWELL. Maybe the record needs to be clarified. You say you approached the BIA and they didn't give you funds, but you got some funds from the Water Rights Office?

MS. MURDOCK. We approached the BIA Water Rights Office. Then we approached BIA—certain people within the BIA. And they made available to the confederated tribes \$50,000, and I believe it was out of the industrial development.

MR. POWELL. So that eventually money was provided by the Government to formulate a study which would presumably help you develop your resources? Is that correct?

MS. MURDOCK. Yes. And we'd like to submit our blueprint for action for your record.

MR. POWELL. We'd like to have that for the record. Thank you.

[The document referred to is in Commission files.]

MR. POWELL. Mr. Smith, would you please identify for us the tribes you are representing?

MR. SMITH. Mr. Gonzales, would you point it out on the map for us?

First off, I'm from the Salt River Indian Community which is located just outside of Phoenix. I'll go into a little bit more detail there. There are five other tribes that more or less—Whereas Ms. Murdock and the five Colorado River Tribes represent the wet river, we're representing the dry river tribes.

And the five tribes involved in this are the Fort McDowell Reservation which is located just to our north. Salt River is over to your left there, Tony. Salt River. Then just to the north is Fort McDowell.

The other tribes are the Gila River Indian Community, Pima-Maricopa, and also Ak-Chin and the Papago.

MR. POWELL. Mr. Smith, would you give us a brief description of farming activity of these tribes in the past and the manner in which they have made use of Salt and Gila Rivers?

MR. SMITH. Okay. The Pima, the Salt River, the Salt and the Gila River Indian Communities are both, Pima and Maricopa Indian Communities, two separate reservations. However, our

agriculture dates back over a couple of thousand years as farming areas in the Salt River and Gila River areas or Gila and Salt River valleys by the ancient people which are now known as "hohocam" but the word "hohoigum" which represents vanished or disappeared people.

We still have within both reservations evidence of prehistoric canals that these people had dug by hand running water from both the Salt and Gila Rivers into the lands on which they lived and which they had been farming for the years that I indicated.

We are presently— Both the Gila and the Salt River Communities are still involved very much in agriculture. Perhaps I can go into some little more clarification as to our particular location as far as the Salt River Indian Community.

We are surrounded by three major metropolitan areas in the State of Arizona: Mesa, Tempe, and Scottsdale. Phoenix city limits is probably somewhere around 5 miles from within our boundaries.

MR. POWELL. Are they upstream from you?

MR. SMITH. Pardon?

MR. POWELL. Are they upstream from you?

MR. SMITH. Downstream.

MR. POWELL. Downstream?

MR. SMITH. Yes. Even though we have all these metropolitan areas, our community is still very much involved in agriculture. Our main source of income for our community members is agriculture.

We have had a leasing program that we contract or lease the land out to farm contractors for production of various crops, and we presently have an enterprise within the community that is formulated by members of our community in which they are attempting to gradually take over the entire farming program within our community.

So agriculture and water go hand in hand, and I think that you can see the very important reason that we are very concerned with water and our rights.

MR. POWELL. Are there industries operated upstream from Gila River and Salt River Reservations?

MR. SMITH. There are some industries. I guess if you would want to call the irrigation projects, the Salt River project and some of these, industries, I guess you would say yes.

The reason that the Gila and the Salt Rivers are dry now is because of the Salt River project as well as the San Carlos project upstream in both these rivers have built a series of dams which has completely shut off the water passing by or

through the reservations. That's why we are in a dry state as of now.

MR. POWELL. And yet, given your historical use, you did or did you not have prior and paramount rights to the use of that water? Is that correct?

MR. SMITH. Yes, yes we did have.

MR. POWELL. And the trustee has never taken any action to protect those interests or taken insufficient action I should say to protect those interests?

Perhaps Mr. Marks could help us out on that.

MR. MARKS. Well, under the *Kent* decree there were some water rights that were adjudicated, but certainly at that time, in our opinion, there were not sufficient or proper representations made. If there had been, I think the Salt River Community would have come out with more water rights, which they should have.

For example, it has been estimated that if the Salt River had been left as a free-flowing stream there would have been about 1,300,000 acre-feet available.

MR. POWELL. And much less than that is available now? It's virtually dry, is it?

MR. MARKS. Yes, except in times of flood when they have to release water.

MR. POWELL. In this *Kent River* decree were Indian interests represented by the United States Government?

MR. MARKS. Yes. That was established— The *Kent* decree, I believe, was around in the early 1900's.

MR. POWELL. Was there a quantity of water which was allotted for Indian use?

MR. MARKS. Yes. Yes, there was. The total acre-feet per year on the Salt River is approximately 12,672 acre-feet, and then—

MR. POWELL. For the Indians?

MR. MARKS. Yes, for the Salt River Community. But that is acre-feet, not for acres. They have some 46,000 acres in their reservation.

MR. POWELL. That amount then would be inadequate for their needs?

MR. MARKS. It certainly is. They only can irrigate now approximately 10,000 acres when they could irrigate some 24,000 acres that are available.

MR. POWELL. I see. That 12,000 acre-feet you mentioned, is that coming down the river?

MR. MARKS. That is water that comes down through the canals that are allocated through the Salt River project.

MR. POWELL. Does it get to the Indians?

MR. MARKS. Yes.

MR. POWELL. This decree, is it interlocutory? The *Kent* decree?

MR. MARKS. No.

MR. POWELL. It's a final decree?

MR. MARKS. As far as I know.

MR. POWELL. You would say that the Government didn't discharge its trust responsibilities in agreeing to that?

MR. MARKS. Well, I wouldn't say that, excepting I would say that at that time I think— As we come down, you know, you can be a Monday morning quarterback.

MR. POWELL. I see.

MR. MARKS. And if representations were made now that were made then, I mean, that we have available now, I think— And I think if this *Kent* decree is able to be reopened, which they might be able to do under the *Winters* doctrine at least, they would be entitled to at least treble this or some 72,000 more acre-feet should be available to them.

MR. POWELL. I see.

Mr. Smith, the tribes you represent here are very concerned, are they not, as to whether they will receive any water under the Central Arizona project?

MR. SMITH. That is correct.

MR. POWELL. Why do these tribes want part of the water allocated to them? I take it your early testimony suggests the reasons.

MR. SMITH. Mainly for agricultural purposes. The main Salt River, Gila River, as well as Papago and Ak-Chin Community are very much involved in agricultural use or agricultural uses for their lands now even though, as everything seems to be, all our irrigation systems and our water supply is very inadequate.

MR. POWELL. Do you anticipate that you will be able to have allocations from the Central Arizona project?

MR. SMITH. Well, we are anticipating, yes, but whether or not— We have never gotten any commitment from anyone that we would. It's something we are hoping will come about.

MR. POWELL. Yes, Mr. Marks?

MR. MARKS. Well, I might say that under the Colorado River Basin Act the Indians are authorized to contract separately with the Secretary for an allocation of water.

MR. POWELL. I see. Has that been done?

MR. MARKS. Not as yet.

MR. POWELL. But you intend to do that? Is that correct?

MR. MARKS. Yes. There has been a study made, and I think Mr. Smith can report on that.

MR. SMITH. We have gone through the same process basically as the river tribes along the Colorado River. What had happened—just a little background for your information for the record—the State of Arizona, of course, has been very much involved with the Federal Government in getting a contract and a certain amount of allocation from the reclamation project, the Central Arizona project.

Now, about the beginning of this year, early part of this year, the tribes in the central Arizona area were informed that the State was ready to submit their documents to the Federal Government to receive water allocations. At that point the tribes realized that we had no involvement or no input into this particular report that the State was submitting to the Federal Government.

We asked— We got some commitments from Secretary Morton, some from Harrison Loesch, which indicated that they would allow us—I believe they gave us about, how many? about 6 months? How long a period did we have?

MR. MARKS. They gave us time—

MR. SMITH. Well, they gave us enough time in which we could hire some water experts and conduct a study in which this study could be implemented into the report that the State was putting in.

We did receive Federal funding from the Department of Interior. I think it came through the Bureau of Indian Affairs. We also got a \$50,000 contract in which our study was made, and we also have a document we'd like to enter to your report.

MR. POWELL. Mr. Chairman, with your permission, we will make that a part of the record.

COMMISSIONER RANKIN. So granted.

[The document referred to is in Commission files.]

MR. POWELL. Mr. Smith, your own tribe, Pima-Maricopa Salt River Community, seeks to make claims on land alongside and including Salt River, we understand. Would you briefly explain the nature of those claims?

MR. SMITH. Well, just a little detail on this. When the original Executive order was established, the Executive order that established our community did indicate that we were entitled to lands 2 miles on each side of the Salt River extending all the way up into the White Mountain Apache area and down into the southern part of what would extend past the Phoenix area. And another Executive order cut off some of these areas.

With the reclamation project being on Salt River, the Oram Dam, when it becomes reality, will be located within the Salt River Indian Community, and we are proposing to exchange lands for this particular project, taking Reclamation lands along the Salt River in exchange for some of the land that they would take from us that would be under water.

MR. POWELL. I see. I have no further questions, Mr. Chairman.

COMMISSIONER RANKIN. Mr. Mitchell?

COMMISSIONER MITCHELL. No, no questions.

COMMISSIONER RANKIN. Mr. Buggs?

MR. BUGGS. No questions.

COMMISSIONER RANKIN. Ms. Murdock, just to show that I come from a wet river country, if the Indians exercise all their water rights on the Colorado River— It's a navigable stream? Is that right?

MS. MURDOCK. Yes, it is.

COMMISSIONER RANKIN. A river navigable at law is navigable in fact? Is that correct?

MS. MURDOCK. Yes.

COMMISSIONER RANKIN. What happens to the flow of the river should all your rights be recognized?

MS. MURDOCK. Well, I imagine that it would be depleted, as it will be with the Central Arizona project.

COMMISSIONER RANKIN. You have no estimate or idea to what degree it will be depleted, do you? Or do you?

MS. MURDOCK. Well, when we have asked—and we met with Mr. Wesley Steiner of the Arizona Water Commission—when we asked about the depletion of the river, because the tribe does have 90 miles of river frontage, he told us that it wouldn't deplete it if you can believe that, but I couldn't.

COMMISSIONER RANKIN. What do you believe?

MS. MURDOCK. Well, I believe it will be depleted, and I think that there are rights to the river and that those rights should be established, and I feel that people should take into mind what is good for the area and the moving water.

To allow the central part of Arizona to grow into a monster such as Los Angeles or something is entirely against environment. It's entirely something that isn't at all practical. And I think people really need to sit down and take a look at things.

COMMISSIONER RANKIN. Have you tried to get the environmentalists on your side?

MS. MURDOCK. Yes. Well, you know, I guess the Sierra Club and some of these. But it seems to be a lot stronger project. This Central Arizona project has a lot of push behind it.

I don't know whether you're familiar or not, but I believe there are about requests in to the Central Arizona project for 4.9 million acre-feet of water. So there's a lot of people that supposedly need water, and I think there's other ways of accomplishing it. And I think that many of these ways have been brought out in various studies.

And one of the reasons why we came to this meeting was we felt that it's very imperative to the tribes not only to let people know that their water rights may be infringed upon, but to let the general public know that they are going to have to suffer the consequences of a monster such as CAP [Central Arizona project], not only in high water payments and this type of thing but just in the fact of diverting water and what it does to environment.

And I think that I was a little disappointed today not to find Mr. Bill Veeder here. I feel that he has been imperative to the tribes in bringing to the attention and attempting to get perfection and protection of Indian water rights, and to see that he is not here and that his testimony which he can give so greatly and so much more technical than I is not going to be a part of the official record, and it just deeply hurts me that he's not present and able to do this.

COMMISSIONER RANKIN. Well, we are glad, however, that you are here, and I want to assure you that the testimony that you two have given will become a part of our record so that people can read it.

Mr. Powell has one more question.

MR. POWELL. Mr. Smith, I am told with respect to the last matter you mentioned, the claim you have, there is a telegram from the Department of Interior admitting a conflict of interest? Is that correct?

MR. SMITH. Let me just back up a little bit beyond that since I am going into two different subjects.

One, I would like to point out that the Central Arizona project is only one water problem within the State of Arizona. There are many other problems that do exist and which we are actually involved in. But the Central Arizona project seems to be the largest one.

Now, concerning the question that you mentioned about a telegram that was received by our community by Harrison Loesch, this involves our dry river. When the river was running there was a boundary, more or less a visible boundary there. When the river became dry there was nothing to indicate exactly where the boundary, the south boundary of our community, would be.

We have been fighting constantly for the past 20 years to get the south boundary of our community established, and just recently we have finally gotten the Bureau of Land Management after much arm-twisting and much persuasion to survey a portion of our south boundary.

When the boundary was surveyed by the Bureau of Land Management in the dry river bed there were many areas in which our neighbors on the south bank had encroached on reservation lands.

MR. POWELL. Those are non-Indians?

MR. SMITH. These are non-Indians. And they were taking sand and gravel deposits from the river bed for the use of producing cement and aggregate materials.

When we had the boundary established by this survey, we were faced with a statute of limitations which ran out last July 18 of this year. I think all of you are aware of that. We had to file claims to things that occurred prior to 1966.

Mr. Marks, myself, staff from the Bureau of Indian Affairs area office in Phoenix, staff from the solicitor's office in Phoenix, and members of the central office in Washington went to the Department of Interior and asked if they would carry the ball for us and file these suits in our behalf through the Solicitor's department of the Interior.

They, in turn, went to the Department of Justice. Department of Justice said, "If you will recommend to us that this can be done, we will take the case."

We came back to Arizona feeling that we were in pretty good shape. About a week later received a telegram from Mr. Harrison Loesch in which—for the record I will leave the whole telegram with you, but I think the last portion I'd like to read just for general information for everyone that's here today.

This is just a portion:

"By virtue of the Secretarial determination of the boundary, I cannot in good faith request the Department of Justice to seek damages from such persons. I best agree that as far as the question of seeking damages from third parties ultimately resulting from a mistake in factual assumption that existed in this Department for decades is concerned, the situation appears to present a classic example of the conflict of interest which this Department has often faced and can only note that the Indian Trust Council Authority legislation which has been so strongly supported by this Administration resolved some of these basic conflicts of interest in which this Department so often finds itself."

MR. POWELL. Mr. Chairman, I certainly would like to have that for the record—sort of an admission against interest.

COMMISSIONER RANKIN. We want that in the record. Thank you very much.

[Whereupon, the document referred to was marked as Exhibit No. 16 and received in evidence.]

MR. BUGGS. Mr. Powell, perhaps I ought to say that we did recognize the importance of Mr. Veeder to these hearings, and he was invited to come, and I got a telephone call just before I came out here from the Assistant Secretary to whom Mr. Veeder reports indicating that he would not be permitted to attend these hearings.

MR. POWELL. They are beyond our subpoena power.

We also wanted to have Mr. Phil Cork, and we got the same thing.

MS. MURDOCK. I think this is one of the same problems that many of the tribes is confronting and in requesting what they feel is the expertise help in getting them to, as I said, perfect and protect their water rights.

And I think that the importance of a meeting like this such as, you know, the Civil Rights Commission, that you really are judging the capacity of living. And with the conflict of interest that is present and with the present administration, we feel, wedded to the CAP program that will take water from an already overallocated or overappropriated river is surely a violation of our civil rights, as water to the survival of the Indians is invaluable.

I hope that you will be able to help the Indian tribes, all of them that have been before you testifying.

I think that the Confederation, the Lower Colorado River Tribes, came out and requested a moratorium of the CAP project. I think that indications are that the dry river tribes may not receive some of the things they want. True, they haven't been totally satisfied. The Papago Tribe has come out and stated they will not support the project if it's not held up, if they are not allowed to perform other studies. I think the Fort McDowell Tribe whose reservation will be flooded—I think there are just a lot of things that are infringements on civil rights that this Commission should look into and investigate.

COMMISSIONER RANKIN. Thank you very much.

MS. MURDOCK. Thank you for inviting us.

MR. SMITH. Is the record going to be open for written comments at a later date?

MR. POWELL. The record will be open for 60 days.

MR. SMITH. Okay.

COMMISSIONER RANKIN. Thank you for your able and pertinent testimony. We appreciate you coming over from Arizona to give us this testimony.

We next have a Government panel. I will ask Walter Olson, Lafollette Butler, John Carver, Dick Jeffries, Hans Walker, and Lotario Ortega to come to the witness stand.

[Whereupon, Messrs. Walter Olson, Lafollette Butler, John Carver, Dick Jeffries, Hans Walker, and Lotario Ortega were sworn by Commissioner Rankin and testified as follows:]

TESTIMONY OF MR. RICHARD JEFFRIES, PHOENIX AREA OFFICE, BUREAU OF INDIAN AFFAIRS; MR. JOHN E. CARVER, ACTING ASSISTANT DIRECTOR, AND MR. WALTER OLSON, DIRECTOR, ALBUQUERQUE AREA OFFICE, BUREAU OF INDIAN AFFAIRS; MR. LOTARIO D. ORTEGA, FIELD SOLICITOR, ALBUQUERQUE OFFICE, DEPARTMENT OF THE INTERIOR; MR. LAFOLLETTE BUTLER, ASSISTANT TO THE DIRECTOR, PHOENIX AREA OFFICE, BUREAU OF INDIAN AFFAIRS; AND MR. HANS WALKER, JR., DIRECTOR, OFFICE OF INDIAN WATER RIGHTS, DEPARTMENT OF THE INTERIOR, WASHINGTON, D.C.

MR. POWELL. Would you each please state your name, address, and job title for the record?

MR. JEFFRIES. I'm Dick Jeffries. I am employed in the Phoenix area office of the Bureau of Indian Affairs. My job title is water rights for the whole area office, Bureau of Indian Affairs.

MR. CARVER. My name is John E. Carver. I'm Acting Assistant Area Director for the Albuquerque area office, in natural resources protection.

MR. OLSON. Walter Olson, Area Director, Albuquerque area.

MR. ORTEGA. My name is Lotario D. Ortega. I am field solicitor for the Department of Interior. My office is in the Federal Building in the U.S. Courthouse here in Albuquerque.

MR. BUTLER. I am Lafollette Butler. I am the Assistant to the Area Director in Phoenix, Arizona, for the Phoenix area, which covers Arizona, Nevada, and Utah.

MR. POWELL. You represent Mr. Artichoker?

MR. BUTLER. That's correct.

MR. WALKER. My name is Hans Walker, Jr. I am the Director of the Office of Indian Water Rights in Washington, D.C.

MR. POWELL. Mr. Olson, would you please give us a brief description of the functions of your area office and then elaborate on what role if any your office plays in protecting the water rights of Indian tribes in the area?

I am particularly interested in the role you play with respect to water rights and land resources.

MR. OLSON. Should I dispense with the other?

MR. POWELL. Well, give us a brief description.

MR. OLSON. Okay. We administer for 24 tribes in New Mexico and in Colorado the programs that are provided through Congress for these tribes, from education through the resources areas, economic development, and lately we have set up our own unapproved section which deals directly with water rights. Mr. Carver is the representative.

Yes, we work on protection of water rights and other resources rights. That is a good share of our responsibility. We have done as much as we could do with the funds we have had to do with.

MR. POWELL. Mr. Carver, would you want to elaborate on that in any detail? Is that a good enough general description? Do you have anything to add?

MR. CARVER. Particular areas that we do work in this: in the agricultural field, irrigation construction, irrigation operation and maintenance, water resource-based outdoor recreation projects, the timber resource management and protect on program. That should pretty well cover it.

MR. POWELL. Mr. Butler, on behalf of Mr. Artichoker who is Mr. Olson's counterpart for the Phoenix area office, would you please tell us whether or not the Phoenix area office has responsibilities similar to those of the Albuquerque area office, and, if not, how the Phoenix office responsibilities differ?

MR. BUTLER. Basically, the responsibilities are the same. We have 44 reservations or colonies in our jurisdiction. The area covers all of Arizona except the Navajo Reservation. It covers all of Utah except that portion of the Navajo Reservation that is in Utah. It covers all of Nevada. Some of the reservations lap over into California, over into Oregon, and over into Idaho.

MR. POWELL. So that basically the tribes whose interests we have been looking at in New Mexico fall within the jurisdiction of Mr. Olson, while the tribes whose interests in water we have been looking at in Arizona fall within the jurisdiction of the Phoenix area office which is your responsibility?

MR. BUTLER. That's correct.

MR. POWELL. Mr. Ortega, you are the field solicitor for the Albuquerque area office? Is that correct?

MR. ORTEGA. Yes. My office serves as legal counsel to those Interior Department agencies that headquarter here in Albuquerque.

MR. POWELL. I see. You then represent Mr. Olson insofar as he has responsibility to protect the water rights of Indians in the Albuquerque area? Is that correct?

MR. ORTEGA. Yes. My office gives legal counsel to Mr. Olson's office.

MR. POWELL. Does that general statement suffice regarding this area or is there something else you want to say in that regard? Does that general statement suffice that you represent Mr. Olson insofar as he protects the Indians' rights to the use of water?

MR. ORTEGA. Well, in certain of the lawsuits that are pending now my office serves a little different function also. One of the attorneys that works with me is named as an Assistant United States Attorney for the purpose of prosecuting these cases.

MR. POWELL. I see. Now, you mentioned that you represent all of the agencies over which Mr. Olson has some responsibility—all of these Interior agencies, I beg your pardon.

MR. ORTEGA. Well, for example, Mr. Olson has the Albuquerque area office, and I give him legal counsel. There is also an area office at Window Rock, Arizona, which covers the Navajo Reservation. That is also one of my client agencies, and I give legal counsel to him.

MR. POWELL. But in addition to the BIA area office, you represent the Bureau of Reclamation and Land Management and other kinds of activities of the Department of Interior? Is that correct?

MR. ORTEGA. I do not represent the Bureau of Land Management. That is handled by our Santa Fe office. And I represent a very small office of the Bureau of Reclamation. It's the Middle Rio Grande project office.

MR. POWELL. I see.

MR. ORTEGA. I represent Mr. Nelson who is the regional director of the Bureau of Sport Fisheries and Wildlife and also the Branch of Plant Design and Construction which is the construction agency of the Bureau of Indian Affairs nationally. It is headquartered here.

MR. POWELL. You mentioned the Bureau of Reclamation and the Department of Wildlife and Fisheries, I think?

MR. ORTEGA. Bureau of Sport Fisheries and Wildlife.

MR. POWELL. Now, doesn't it happen that the mission of the Bureau of Reclamation on occasion conflicts with the mission of the BIA, particularly insofar as protection of water rights is concerned?

MR. ORTEGA. Not insofar as my office is concerned. We very scrupulously advise everyone that whenever we appear at an Indian meeting or in a meeting in which Indian matters are involved that we represent the Bureau of Indian Affairs and the Indian interest, and for that reason the Bureau of Reclamation has its own legal counsel. For this particular area, Mr.

Fred Gray, the field solicitor in Amarillo, gives legal advice to the regional director of the Bureau of Reclamation.

MR. POWELL. Both you as field solicitor here in Albuquerque representing Mr. Olson and Mr. Gray as field solicitor representing the Bureau of Reclamation—where did you say?—

MR. ORTEGA. Amarillo.

MR. POWELL. —report to the Solicitor of the Department of Interior, do you not?

MR. ORTEGA. Yes, who also reports to the President of the United States.

MR. POWELL. Okay. But the President of the United States has commented on this.

Now, then, that Solicitor is responsible for two different field solicitors who represent clients whose interests may conflict? Isn't that correct?

MR. ORTEGA. That is possible.

MR. POWELL. Do you think that is a good way for a law firm to act? You know, a private law firm would be held to violating an ethical standard if it represented two clients with conflicting interests. Isn't that correct?

MR. ORTEGA. The only answer I can give you, Mr. Powell, is that the administration has sponsored a bill intended to establish the Trust Council Authority. The Congress has not acted on it.

MR. POWELL. You think that is a good idea in view of the inherent conflict of interest within the Solicitor's office? Is that correct?

MR. ORTEGA. I'm not in a policymaking position, Mr. Powell.

MR. POWELL. I know that, but based upon your experience with these matters do you have an opinion as to whether that is—

MR. ORTEGA. That is probably a good idea.

MR. POWELL. I see. Thank you.

I am told that the field solicitor from Phoenix is here and was not called. I apologize to him. Would he come up?

COMMISSIONER RANKIN. Will you stand to be sworn in?

[Whereupon, Mr. William G. Lavell was sworn by Commissioner Rankin and testified as follows:]

TESTIMONY OF MR. WILLIAM G. LAVELL, FIELD SOLICITOR, PHOENIX OFFICE, DEPARTMENT OF INTERIOR

MR. POWELL. I apologize to you. I didn't know you were here.

MR. LAVELL. William G. Lavell.

MR. POWELL. You have heard the comments, my colloquy with your colleague. Do you have anything to add? Do you agree that the fact that you have solicitors representing

bureaus who potentially have conflicting interests is probably not a good way to handle it?

MR. LAVELL. I agree certainly that the Trust Council Authority bill that has been pending several years before Congress ought to be passed.

MR. POWELL. Thank you.

MR. BUTLER, when was the Phoenix area water rights office established?

MR. BUTLER. We have been engaged in water rights matters for a great number of years. The water rights office was established within the past, oh, year and a half I suppose. Prior to that in 1966 we had established an office to deal with the related problem of land boundary and title problems, and it's difficult in the Southwest particularly to talk about water without talking about land and vice versa.

So in 1966 we established the land boundary and title section in our office, and this inevitably lapped over into the water rights matters. So for practical purposes I suppose we could say that since 1966 we have had a land boundary and title and water rights office.

MR. POWELL. What is the objective of the water rights office?

MR. BUTLER. The objective of the water rights office is to assist the Indian tribes and their legal counsel and working with them in protecting their water rights.

MR. POWELL. You are in touch then with people like Mr. Simpson and Mr. Marks and their clients?

MR. BUTLER. Correct.

MR. POWELL. Mr. Carver, does the Albuquerque area office have an office similar to the water rights office in the Phoenix area?

MR. CARVER. Not as such, but we have brought together some expertise in trying to provide the additional assistance to assist the tribal groups, particularly since the pueblo water suit cases have been filed in court.

MR. POWELL. Then would you say your office does essentially the same work as Mr. Butler's office does?

MR. CARVER. Yes, I would say very close.

MR. POWELL. Mr. Walker, we have yet another water rights office created at the Washington level. Your office was established only a year ago. Is that correct?

MR. WALKER. Yes, it was established in January of this year.

MR. POWELL. January of this year? Less than a year. Why was your office created? And what does it do?

MR. WALKER. The office was created as an interim measure to take care of all the water rights problems and to avoid to the extent possible the conflicting interests in the Department, pending the enactment of the Trust Council Authority.

The Water Rights Office reports through the Commissioner directly to the Secretary and does not report to an Assistant Secretary.

MR. POWELL. Beg your pardon? Again?

MR. WALKER. The line of authority runs from the Water Rights Director to the Commissioner to the Secretary.

MR. POWELL. Commissioner of Indian Affairs?

MR. WALKER. Yes. While most of the other divisions within the Bureau report to the Assistant Secretary for Public Land Management.

MR. POWELL. I see. You do come under the Commissioner? You don't report directly to the Secretary?

MR. WALKER. No.

MR. POWELL. I see. Are there any specific kinds of things that you do that would be helpful for us to know? I take it you have heard some of the testimony this afternoon. What role does your office play?

I understand that the money that goes to the Indian tribes to conduct these studies comes out of your office. Is that correct?

MR. WALKER. That's correct. We had a budget beginning in January to July 1 of approximately \$500,000. For fiscal year 1973 which began July 1 we had \$1,750,000 for carrying on the work of the Water Rights Office.

MR. POWELL. Do you have a judgment as regards whether or not this kind of money is adequate to meet the need?

MR. WALKER. No, it is not adequate to meet the needs, but the budgetary process is one which is a 3-year cycle, and we were not in on the initiation of these funds, so the first funds that we will have any information submitted on would be in 1977, I guess.

MR. POWELL. We heard testimony earlier from Mr. Velarde—I don't know if you heard that testimony; I think he is president or vice president of the Jicarilla Apaches—to the effect that they needed sorely money to make studies regarding the use of their water and they were not able to get that money from the Federal Government.

Fortunately, they were able to get it from a private funding source.

To what would you attribute the reason that the trustee was not able to provide money to the Jicarilla Apaches?

MR. WALKER. Well, first of all, the demand for funds is greatly in excess of the amounts available.

Secondly, for the Jicarilla Apache we did indicate that we would allocate money for that tribe, but they informed us they had derived funds from a private source.

MR. POWELL. I see.

Mr. Butler, we have heard a lot of testimony about the problems of the Lower Colorado River Tribes regarding their water resources. They have had many, many problems. What is the Phoenix area office doing to help these tribes?

MR. BUTLER. Well, with regard to the—

MR. POWELL. Let me refer your attention to one specific item. I think it was the Colorado River Tribes—is that the term?—Colorado River Tribe irrigation project begun 100 years ago, only 50 percent complete. How can that happen? How can that be?

MR. BUTLER. Congress hasn't appropriated the money. We have requested money every year to work for irrigation construction on the Colorado River.

MR. POWELL. You mean the Congress gets requests each year and for 100 years in the case of the Colorado River Tribe, the last 20 years in the case of many of these projects, Central Arizona, Rio Grande, and somehow or other these projects, Bureau of Reclamation projects, are funded, fully funded; States are authorized to enter into compacts and they are approved, yet the interests of Indians in seeing to it that their irrigation projects are accomplished don't get done? To what would you attribute that?

Is it a question of zeal? It is a question of the vigor of the Department in carrying out its Bureau of Reclamation projects as opposed to the vigor of the Department in carrying out its Bureau of Indian Affairs interests?

MR. BUTLER. I think that for many years Indian people have been telling us what their priorities are, and I think the problem has been that we haven't been listening. Neither the Bureau nor the Department nor the Office of Management and Budget nor the Congress have been listening to what the Indian people tell us their priorities are.

I think one of the things that has helped in the past few years, maybe the past 2 or 3 years, is that we are now trying to build programs from the reservations up rather than have programs handed down from people who think they know what is good for Indians, and I think that this may be a part of it.

As an example, in the past, say, 10 years we have embarked on an extensive employment assistance, relocation program. Now, granted, there is need for this program, but if you were to ask the Indian people, at least in the Phoenix area, what their priorities are, they tell us that their priorities are land boundary determinations and water right protection, and then the development of their economic resource.

But I don't think that the Government as a whole has done a

very good job of listening to what Indian people tell as their priorities.

MR. POWELL. Do you think the establishment of an independent agency outside the Department of the Interior, whose authority would be coextensive with the interests of Indians and who would be able to participate in administrative, judicial, and congressional procedures affecting Indians—do you think that would be a more effective device towards having the interests of Indians asserted?

MR. BUTLER. It might help somewhat, but I don't think that that even gets to the basic problem. And I don't know whether there is an answer to the basic problem.

The basic problem is that the Indians are asking the Congress for money, and if the Congress doesn't appropriate money, then they don't get their programs accomplished. And I think the question that needs to be asked and the question that needs to be answered is whether or not the Congress is obligated to appropriate money.

MR. POWELL. Well, I suppose that so long as the United States Government is a trustee for the Indian interests, the trustee does have an obligation to protect those interests, doesn't it?

MR. BUTLER. Well, I'm not sure that the Congress has the obligation to appropriate money.

Over the years the argument has been in the congressional—I was in the Washington office for many years and have been to numerous appropriation committee hearings. And the appropriation committees ask the question: "Well, what are the Indians doing with their money? Why don't they put their money into the improvement and the development of their lands?" These are the questions that members of Congress ask when we, the Bureau, go to the committees for appropriations.

MR. POWELL. In general terms, don't the treaties which were entered into with Indian tribes talk in terms of perpetuity? And isn't much of the money being provided the Indians under obligations the Government has pursuant to treaties that it has entered into with Indian tribes? And isn't much of this legislation under which monies are provided based upon these treaty obligations of the United States Government?

MR. BUTLER. I'm not sure that that's the case. I think that's a very good legal question, but I'm not prepared to answer it, sir.

MR. POWELL. In our investigation, one of the things we heard quite a bit about was the *Gila River* decree, the so-called *Gila River* decree. Are you familiar with that?

MR. BUTLER. To some extent.

MR. POWELL. Under that decree we gather that allocations

made to Indians, the Indians there involved, were not really consistent with the prior rights they had in terms of at least future use. Do you feel that perhaps one of the things the Bureau of Indian Affairs ought to look at, that the Phoenix area office ought to look at, is whether or not that decree should be opened up?

MR. BUTLER. This is what we are looking at. This is one of our major undertakings, is to look at the entire Gila River drainage to see what we can do. And there are several aspects to that that are rather technical, and I don't know whether— But we are making that attempt, sir.

If I may, I would like to add this: that our water rights and land boundary office is funded out of regular program monies. We do not have any special monies except for in 1973, I think, it's \$145,000. And this \$145,000 is for specific studies. But we don't have any money with which to operate these offices. We are using regular program monies.

MR. POWELL. You don't have any relationship then to Mr. Walker's office?

MR. BUTLER. \$145,000 for special studies has come from Mr. Walker's office.

MR. POWELL. But your water rights office doesn't have any relationship to Mr. Walker's Water Rights Office? Is that right?

MR. BUTLER. No, it is not right. What we do at the field level is prepare the necessary evidence or necessary studies that will be needed whether the decision to be made is administrative or legislative or judicial. And we refer that to the Washington office where Mr. Walker then takes it from there.

MR. POWELL. I see. The field solicitor from Phoenix, that's Mr.—?

MR. LAVELL. Lavell.

MR. POWELL. Would you care to comment on this *Gila River* matter? Many Indians seem to feel that the trustee in entering that decree really didn't represent their interests. Is this a matter that your office would be concerned about?

MR. LAVELL. Well, the decree, of course, was entered in 1935.

MR. POWELL. I know. In 1935.

MR. LAVELL. And it was a consent decree.

MR. POWELL. Yes, but consent not by Indian interests certainly but by trustees.

MR. LAVELL. By the United States as trustee, of course.

MR. POWELL. Yes.

MR. LAVELL. And I understand that there was an attempt by the tribe to intervene in the suit but that the court denied

that attempt on the basis that the interests were adequately represented by the United States Government.

MR. POWELL. We are more interested, I think, in the present and future. And the question is whether the decree should be opened up. It seems to me one of the reasons why maybe the Federal Government ought to make sure the Indians get water in the Central Arizona project is that it seems pretty clear that the Indian interests were not fully represented in that Gila River matter.

MR. LAVELL. You're suggesting that the decree could be reopened?

MR. POWELL. I'm asking can it be reopened?

MR. LAVELL. I have not had— Well, my office has not had jurisdiction in this particular matter until July of this year, due to various subject matter assignments.

MR. POWELL. It would be very interesting. I wonder if you'd be good enough to give us your views sometime subsequently. I ask you now to give us your views.

MR. LAVELL. Yes, I shall be happy to.

MR. POWELL. All right.

Now, Mr. Butler, will a part of the 1,200,000 acre-feet of water diverted by the Central Arizona project be allocated for use by central Arizona tribes?

MR. BUTLER. Will it be?

MR. POWELL. Yes.

MR. BUTLER. This is a matter that—

MR. POWELL. That the Secretary decides presumably?

MR. BUTLER. That's right.

MR. POWELL. Do you have any information on that?

MR. BUTLER. The tribes, as Mr. Smith discussed, were given money with which to prepare their argument, and their argument here is with the State of Arizona—to prepare their argument to the Secretary as to the amount of water that they thought they were entitled to under the Central Arizona project.

MR. POWELL. Shouldn't the Bureau be an advocate for the Indian interests in this regard? Should the tribes have to go it alone, so to speak?

Let me back up for a moment. I want you to answer that question, but the Central Arizona project, was that pursuant to compact with Arizona and California approved by the United States Government? Isn't that right?

MR. BUTLER. I'm not familiar with the legal background of the Central Arizona project.

MR. POWELL. What I'm getting at is—

MR. BUTLER. It is my understanding that *Arizona v. California* gave a certain amount of water to the Indian tribes on the Colorado River. A certain amount of water was decreed to belong to the State of California. And a certain amount of water was decreed to belong to the State of Arizona.

The State of Arizona, then, has obtained Federal legislation to build the Central Arizona project, by which it, the State, will put its share of water that it got under Central Arizona project to beneficial use.

MR. POWELL. Was there ever any understanding that the Indian tribes were to get part of that water?

MR. BUTLER. It's part of the legislation as I understand it.

MR. POWELL. It's part of the legislation?

MR. BUTLER. Yes.

MR. POWELL. Then if it's part of that legislation, it is certainly not a matter solely between Arizona and Indian tribes. If Federal legislation requires that Indian tribes get water, then the Federal Government has an interest in that, and the Bureau of Indian Affairs, it seems to me, not only should but has an obligation to represent the interests of Indian tribes under that Federal legislation. Isn't that correct?

Did you want to comment, Mr. Walker?

MR. WALKER. Yes. We funded their study. In addition, when their report came in as to the quantity of water they thought they were entitled to, the Water Rights Office of the Commissioner supported that demand by the tribes to the Office of the Secretary.

MR. LAVELL. Could I add something there? The, oh, staff work which led up to the request for this money to make the study was all done in the Phoenix area office. The Phoenix area office staff supported the study with their personnel efforts. So it's not accurate to view this as if the Bureau of Indian Affairs has had no involvement. It has had a very deep involvement. It brought it about is what happened.

MR. POWELL. I see.

Mr. Olson, to turn now— We have been talking about Arizona for the last 10 minutes. Let's look at New Mexico, Mr. Olson. Review of the last 70 years indicates that very little if any affirmative effort has been made by Government agencies to assure the New Mexico tribes that their water interests are being protected.

Why is it that there has been no inventory of the interests of Indians to the use of water despite the fact that you have projects such as the San Juan-Chama project, the Middle Rio Grande Conservancy District? Why haven't steps been taken

20, 30, 40 years ago to quantify the rights of Indians, to quantify the rights of Indians so that whether there be public use or private use an Indian tribe would know and could move in, or request the BIA to move in, right away when their rights to water were being infringed?

MR. OLSON. Well, I can't talk 40 years ago, but I can talk 30 years ago. One thing I think that throughout the United States there was no real consciousness of how valuable water was. That was one thing.

There seemed to be plenty of it in most places. And most of the people actually who were in policy positions in Washington and on the Secretary's level too, departmental level, most of them really came from the East to the Middle West where irrigation was not a factor, so the realization, the selling of the idea that water was most important, was most difficult.

Now, there were people that recognized a long while ago. There were Indian people, and there were people in the Bureau, and there were non-Indians outside who recognized this real vital business that water was and did push and did talk about it. And it was very, very slow in coming.

Now, in this last period you're talking about—7 years, I think you mentioned—what we have done with what money we have been able to get and with the people that we had that were actually supposed to be or had been doing other things in terms of resources—their efforts were concentrated in those areas that were coming to suit, being tried in that limited area.

MR. POWELL. Would you say—and Mr. Ortega might want to comment to this—that the steps now being taken, the litigation now underway, when consummated—I understand it's going to be a series of cases—when consummated, that the rights of Indians will be adequately protected?

MR. OLSON. No, I didn't say that, and I didn't mean to infer it.

MR. POWELL. No, but are there things being done now which would look toward adequate protection of Indian water rights down the road?

MR. OLSON. Not in sufficient amount.

MR. POWELL. Not in sufficient amount? What do you need to see to it that this would happen? What would be needed?

MR. OLSON. In terms of dollars?

MR. POWELL. In terms of dollars and in terms of programs.

Yes, in terms of dollars.

MR. OLSON. Well, essentially, the framework for the programs is there if we had the dollars to implement them. And one measure of this—and these gentlemen know the details

much better than do I. But in the last 4 years, if I remember correctly, we have asked for \$12 million to do this kind of work.

MR. POWELL. In your area?

MR. OLSON. Yes.

MR. POWELL. \$12 million? Is that \$12 million each year or \$12 million—

MR. OLSON. No, \$12 million total, if I remember right.

MR. POWELL. \$3 million a year?

MR. OLSON. And we have gotten about three or four.

MR. POWELL. I beg your pardon?

MR. OLSON. We have gotten about three or four. And I'm not talking just about paper work. I'm talking about actual physical work.

MR. POWELL. Mr. Butler, is the experience of the Phoenix office in this regard comparable? You have not been getting adequate funds?

MR. BUTLER. That's correct. We have not been getting adequate funds. And I don't think that we even know the extent of the problem.

One example: We got a favorable decision to the Colorado River regarding the boundary, the west boundary. The proliferation there was something like 200 other cases that needed to be either litigated or involve leasing or attempting to get leases from people who are squatting there. So the proliferation of a case—when you get one case—

MR. POWELL. That doesn't come out of your budget, does it? The Department of Justice does that? Is that right?

MR. BUTLER. No, the preparation of a case to great extent comes out of our budget.

MR. POWELL. I see.

Mr. Olson, we heard testimony from Mr. Singer about the Santa Clara Reservation, the extent to which there has been development around that reservation, the drilling of wells, and whatnot. What assurances do tribes such as Santa Clara have that continued growth of non-Indian communities is not invading their water rights? Until those rights are quantified, certainly there is no way they could tell unless they were to go into court by themselves, unless the trustee were to go into court. Is that correct?

MR. OLSON. Yes, the last part of that is correct. Do you want to answer it more fully?

MR. CARVER. One of the cases now pending in the Federal court does affect the city of Espanola and the area where Mr. Singer referred to. And this certainly should then have a vehicle to determine and limit the expanding uses of the non-Indian community.

MR. POWELL. Mr. Olson, when flood control, reclamation, mining, land management, etc., projects are contemplated, how does the Bureau of Indian Affairs involve itself to make sure that the water rights of tribes will be protected?

Mr. Butler, you can address that too.

MR. OLSON. Will you repeat this again?

MR. POWELL. When flood control, reclamation, mining, land management projects are being contemplated, how does the Bureau of Indian Affairs involve itself to make sure that the water rights of tribes will be protected?

MR. CARVER. Well, different ways. One real good illustration is the proposed flood control project on the Rio Puerco River which involves two of our pueblo groups. We have met with them. The Corps of Engineers have met with them. And the two pueblos concerned would have to provide part of the right-of-way or easement for the reservoir. They have expressed and extended their desires regarding these projects, wanting certain things and certain protection, and as far as we are concerned this will be done or the projects won't be developed.

MR. POWELL. Mr. Walker, I think you have mentioned the amount of money that you are getting. \$500,000—what was it again? \$500,000 in 1971?

MR. WALKER. For 1972 we had \$500,000. For 1973 we have \$1,750,000.

MR. POWELL. And is it projected beyond that point?

MR. WALKER. Yes, for the following year we requested a little over \$5 million.

MR. POWELL. I see. I have no further questions, Mr. Chairman.

COMMISSIONER RANKIN. Commissioner Mitchell?

COMMISSIONER MITCHELL. No, I have no questions at the moment.

COMMISSIONER RANKIN. Mr. Buggs?

MR. BUGGS. Just one or two.

When I was out here about 3 weeks ago, I took a ride about, oh, I guess 25 or 30 miles north of here, and I suppose it was just north of the Santo Domingo Pueblo, and I saw a huge dam being built there and some kind of recreational facility, and some water is to be impounded. Is that the Rio Grande River?

MR. CARVER. Yes.

MR. BUGGS. What is that going to do to the water below that dam?

MR. CARVER. This is primarily a flood control project, Cochiti dam and reservoir. Within the authorizing legislation there was authorized a permanent pool to store water for recreation

purposes which would be provided by the San Juan-Chama project and would also provide the initial filling and also 5,000 acre-feet annually to replace seepage and evaporation losses.

It's my understanding the legislation authorizing the project will only—is primarily for flood control and will only hold back water to decrease flood potential in the downstream area below it, including Albuquerque and six of our pueblo reservations.

MR. BUGGS. That is on reservation land?

MR. CARVER. Yes, partly on the Cochiti Pueblo Reservation.

MR. BUGGS. Is there a private company that is going to be operating the recreational facilities and building residences and industrial parks in that area?

MR. CARVER. The Cochiti Pueblo has a lease, a development lease, with a development company for housing, etc., at the area there.

MR. BUGGS. And that lease, I assume, was approved by BIA?

MR. CARVER. Yes, it was.

MR. BUGGS. Is the pueblo going to profit from this in some substantial fashion?

MR. CARVER. Yes. I would like Mr. Olson to respond regarding the amount of money. It's considerable.

MR. OLSON. Well, in the lease itself, the recreational areas are reserved for the tribe. They will develop and manage those. The development lease, the housing area, will be handled by another company, Great Western in this case, and the tribe gets a percentage.

I think what they have gotten so far— And there are no— I don't think there are any houses there actually lived in at the moment. I think their income this year was something like \$50,000. That should go up a great deal, and I wouldn't want to project because it's dependent on the amount and number of houses that are built.

MR. BUGGS. We did some inquiring around there and I saw all kind of people—you know, it's way up, and those big machines look like ants crawling all over the landscape. And I understand, and I could be wrong here, that only four Indians are employed on that whole project. Is that right?

MR. CARVER. I don't have that information, but I certainly will provide it. There is considerably more employment in the construction as well as in the development of the housing community area, and it is very substantial.

MR. BUGGS. Thank you.

MR. BUTLER. Could I add a comment, please?

MR. POWELL. Yes.

MR. BUTLER. I'd like to respond to two questions that Mr.

Powell asked Mr. Olson. One is what is needed. And Mr. Olson responded from the standpoint of money, and I would like to add to that that there are other things that are needed.

We need the legislation or some legislation, whether it is the bill that the President sent to Congress regarding the Trust Council Authority, whether it is that or not, but we need something to resolve the conflict of interest matter if Indian water rights and Indian resources are to be adequately protected.

I think we also need a clarification—and it's my understanding that this would require legislation also—a clarification of the Bureau's role in administrative or judicial proceedings where the United States is the opposing party. We get caught up in this all the time.

And we could cite you example after example of where we are either told not to help the tribe or to pull off after a certain amount of work has been done. So we need clarification of that.

The other question that Mr. Powell asked Mr. Olson leads into a third area that I think is needed. The question was: What does the Indian Bureau do when we see a flood control project or some other agency of Government or private developers developing, putting in developments that will affect Indian water rights?

I think that the only time that we have any leverage at all, where the Indians or the Indian Bureau have a leverage, is when they want some concession from the Indians. If they want a right-of-way, the tribe and the Bureau can say, "Well, we want to make sure that the Indian water is protected before we give the right-of-way."

If there is not a concession that they want from us, all we can do is to go out and plead with them or possibly try to use some political clout or something of that sort. But we have no lever with which to be heard.

And it seems to me that when we have this sort of a situation that we could apply, that there could be applied, the same concept that was applied with regard to the environment.

The United States found itself with its various agencies going off and doing their own thing, and the thing that they were doing was adversely affecting the environment. And so they got a clearinghouse. By passing the Environmental Protection Act, they provided for a clearinghouse so that at least whether the project proceeds or not, at least the United States knows what the impact on the environment is going to be and can make the decision of whether to proceed or not with that knowledge.

It seems to me that we could have an Indian water rights impact program so that when Federal monies are to be used for any purpose, any kind of development, that we would not proceed until we had an Indian water rights impact statement, and that such a statement would provide the clearinghouse and would give us the leverage that the tribes and the Indian Bureau as trustee needs to assure that development that adversely affects Indian water rights would not proceed or, if it did proceed, it would be with full knowledge of what that adverse impact would be.

Thank you very much.

COMMISSIONER RANKIN. I had a general question a little bit on the ground of the material you were covering.

If money is so important—and we have gone all over the country, and about every agency in every State says, “What we need more than anything else is more money”—but if that is the solution to our problem, upon whom can Indians rely to make an aggressive case before Congress to get that money?

MR. BUTLER. I think we have a good example with regard to the Colorado River Tribes. The Indian Bureau at the agency and area level and the Colorado River Tribes put together the package on the need for irrigation construction money. They went back to the appropriations hearings and presented their case, and they got a million dollar add-on because they went back, and I think—

COMMISSIONER RANKIN. The Indians can do it is what you’re saying?

MR. BUTLER. I think the Indians can do it a lot better than a bureaucrat who goes back there and is thought by the Congress to be looking for money to build his own empire.

COMMISSIONER RANKIN. They have to have a little money to make that presentation though, don’t they?

MR. BUTLER. Yes, and they need the assistance of people, of technicians, to help them put together the story.

COMMISSIONER RANKIN. Thank you.

Commissioner Mitchell, did you have a question?

COMMISSIONER MITCHELL. Just one question of Mr. Walker. Have you done anything in the way of studies out of your office that would help determine the extent of Indian water rights in Arizona and New Mexico? Or have you authorized any studies or are you doing any yourself?

I’m speaking now to the obligation of a trustee to inventory the assets.

MR. WALKER. At this time we are maintaining studies on approximately 40 reservations throughout the United States. In addition, we have—

COMMISSIONER MITCHELL. You say "maintaining studies." You mean that they're ongoing?

MR. WALKER. Inventories. They are ongoing studies, yes.

COMMISSIONER MITCHELL. And you have information coming in to you?

MR. WALKER. Yes.

COMMISSIONER MITCHELL. What do you propose to do? Will you eventually publish that?

MR. WALKER. They will be used as evidentiary material for litigation or administrative action, whatever.

In addition, we are maintaining approximately 12 legal actions in the courts and administrative agencies in adjudicating, protecting the Indian rights.

COMMISSIONER MITCHELL. Thank you.

Mr. Chairman, we have a study done by the All Indian Pueblo Council—really it's a report—as of November 8, submitted to the Commission, and it's in my book. It is called "The Right to Remain Indian" and deals with historic background of water rights on Indian lands. I would like to have this and such other background papers as we have been using in preparing for this hearing entered into the record so that those who subsequently read the record will at least have a look at this.

By the way, some of the beginning pages of the All Indian Pueblo Council study reflect the statements of Mr. Veeder, so he could filter into this hearing under the left guard if the Under Secretary didn't want him to, if you're willing to put that in the record.

[The document referred to was marked as Exhibit No. 17 and received in evidence.]

COMMISSIONER MITCHELL. Finally, I'd like to ask—it's hard to know who to ask this question of. For the Indians we have been listening to here, water seems to be a matter of life and death, or access to a river. And it seems to me to be inescapable that what the Indian is up against is other people who want the water—not Indians, not nature, not evaporation, not pollution, but other people, other interests, developers, people who want to make money on land that doesn't have any value unless they can get water from the Indian.

Essentially, the problem of water for the Indians is the only way they can remain Indian. If they have to leave those territories, if there is no more water for them, then they must become urban Indians or disappear from the reservations.

Someone asked earlier, is there one force that frustrates Indians in their efforts to do anything? Is there a policy determination anywhere to the best of your knowledge, any of

you, that suggests that it is policy to discourage the Indians from remaining along water areas, to encourage them to leave reservations, to leave the communities in which they live, and to enter cities and to disappear and be absorbed into the main corpus of the United States?

MR. OLSON. May I answer part of it? And I am sure several people will respond to this.

In what you have said you have answered a lot of the questions right there. But I think just looking at the money that has been allocated by Congress to the Bureau, one of the most popular programs was its relocation program, and I think it was sincerely believed by the Congressmen that voted for it that this was the way to solve the Indian problem, and I don't think that they thought anything about Indianism or Indian culture or whatever you want to call it.

COMMISSIONER MITCHELL. You are saying in part it is the policy of Congress?

MR. OLSON. Yes. Yes, I am. And I think while we talked about this conflict of interest that exists—and it does—I mean the possibility for it—and I don't mean that the attorneys, Government attorneys, that have dealt in Indian problems haven't done their very best. I'm not insinuating a bit. But I would make one cautionary statement: that setting up a separate and completely Indian agency to protect Indian rights may be setting up a target for a lot of forces to shoot at.

And the biggest single thing that Indians have had to deal with is they are not concentrated enough so that they can make their political force felt. Now, we all know that the greatest strength that Indians have right now is a feeling across America—and I'd say even Western Europe which does influence this thing—that we do have a moral obligation to help Indians. And some day that may go down and Indians will have to be prepared. So every move that they make to get a separate agency and take it away from a structure that has other support should be viewed very carefully in my opinion.

COMMISSIONER MITCHELL. Thank you.

MR. LAVELL. May I respond to parts of that? It was mentioned that relocation is a policy. Well, I don't think it would be accurate to say it's the primary policy at this time, certainly not of the administration. The primary policy is one of bringing jobs to the reservation, and in Arizona we have had some dramatic experience in that.

So while it may not be related directly to the question of, "We want you to live by the water," obviously it's related to

the question, "We want to bring jobs to the Indians on reservations wherever they may be."

Take the experience up on the Navajo Reservation. In the past—what is it?—7 years?—the Fairchild plant at Shiprock, bringing jobs on the reservation, the General Dynamics plant at Fort Defiance, a number of other things.

Down at the Gila River Reservation south of Phoenix, two industrial parks established within the last 5 or 6 years. Jobs brought onto the reservation. The Gila River project was cited in the President's message in 1970—Gila River Reservation—an outstanding example of bringing jobs to the Indians on the reservation.

Now, this varies from reservation to reservation. You notice I have cited one that was fairly far removed from a population center and one that is close. And it's quite a bit different from one reservation to the other, the amount of success that has been attained in this program. But it is an ongoing program. It is one with primary emphasis.

Now, if I may say another word in regard to my particular bailiwick, the legal work, I have only been with the Government for 3 years, and I can only speak from that standpoint. The emphasis in the Solicitor's Office has been toward more of an advocate role in protection of the Indian matters. And I have assumed that role in every item I have handled in the office involving the Bureau of Indian Affairs.

So I think that generally speaking—and it applies to water as well as anything else—there is a policy and the policy is to bring to the Indian on the reservation the wherewithal to attain a decent livelihood.

MR. POWELL. Our research indicates that the congressional policy has changed, you know, flip-flopped from one thing to another. I think it is true—I think Commissioner Mitchell's statement is true—that in the mid-1950's there was the congressional resolution, that there was a policy at one time of termination, and the same programs are now named different things, and there is a balancing.

But one of the problems, perhaps, is that there is no really coherent policy, direct policy, on Indian problems. It varies from decade to decade.

MR. LAVELL. Read the opening chapters of Federal Indian law. It rehearses the whole thing, flops back and forth.

MR. POWELL. One of the things I would like for both the solicitors to do—we made available to you this "Right to Remain Indian" paper. Would you give us your views in writing on the analyses contained therein, Mr. Ortega and Mr.

Lavell? You might want to consult with your solicitor in Washington who also has a copy. Our record is open for 60 days, and we would very much appreciate hearing from you as soon as possible in that connection so that our record will be complete.

[The comments requested were not received by the Commission.]

COMMISSIONER RANKIN. I hate to bring this discussion to a close, but I just nearly have to do it. We are way behind. Yet I want to ask one more question.

[Laughter.]

That's the way it goes every time.

Should Congress appropriate money for this purpose of protecting Indian rights, who would control the money? Who ought to administer this money should Congress appropriate it? What Government agency?

Or should the tribes do it? You think the tribes should do it themselves?

Do all of you believe that?

[No response.]

Okay. That's fine. That's a unanimous answer then, since everybody was quiet.

Well, thank you, gentlemen, very much for appearing, and we feel greatly enlightened by your testimony. Thank you very much.

We are next going to have a panel of governors, and Honorable Timothy Anaya and Honorable Robert Lewis are asked to come to the witness stand.

Mr. Lewis is here. Will you come forward, Mr. Lewis? I'll go ahead and swear you in while we're waiting for Mr. Anaya.

[Whereupon, Honorable Robert Lewis, Governor, Zuni Pueblo, was sworn by Commissioner Rankin and testified as follows:]

**TESTIMONY OF HONORABLE ROBERT LEWIS, GOVERNOR, ZUNI
PUEBLO**

COMMISSIONER RANKIN. Before we start the testimony I want to read this short statement.

After the testimony of the present witness concludes, the Commission will recess for 15 minutes and then reconvene to hear unscheduled testimony in accordance with the procedure which was set forth yesterday morning and which I will now repeat to clarify.

Anyone who wishes to testify in this portion must first speak to a member of the Commission's staff in order that the staff

member may apprise you of our rules regarding testimony which may tend to defame, degrade, or incriminate any individual. Any statement to be made shall be no more than 5 minutes in length. We just had to put that in.

A number of people have already spoken to Commission staff and have been assigned an order in which to appear. It would be unfair to permit anyone who has not yet spoken with the Commission staff to testify before these people who have already been scheduled and who have in some instances been present throughout the 2 days.

Commission's staff will be present during the recess, that 15-minute recess, in the Acoma room down the hall to speak to anyone who wishes to appear.

Thank you very much.

I might add that anybody can submit a written statement if you desire to do so. And as was pointed out a minute ago when the panel was here, you are allowed 60 days in which to prepare and send in to us any written statement that you might like to have made.

You are Mr. Lewis, aren't you?

MR. LEWIS. Yes, sir.

COMMISSIONER RANKIN. You are Governor Lewis?

MR. LEWIS. That's right.

COMMISSIONER RANKIN. Did you have a statement that you desired to read? Since time is so pressing, I wonder if you would be willing to give us your statement?

MR. LEWIS. All right. I have not a written statement at this time, but I would like to bring out several things that we are very concerned about, and I believe that you are the Commission that should rightfully hear what I have to say and give it great consideration so that you can submit it with your report for the President.

COMMISSIONER RANKIN. We will be happy to do so.

MR. LEWIS. You know that when the Indian civil rights bill became law, many of the Indian tribes were caught unprepared for the things that we had to do in complying with this bill.

Now, for instance, in setting up our judicial systems, we are going to have to make necessary changes in the areas of concern. Many tribes do not have monies to comply for a great many years unless we get some help. And this is in the area of training judges and perhaps prosecutors, so that the Indian courts can be set up to serve the people efficiently and be something that we can all be proud of.

But in formulating bills and formulating laws, sometimes

there are many facets that are never considered applies to Indians and Indian tribes. And certainly Indian tribes cannot change their ways overnight. And it takes time because we often speak both languages in explaining matters to our people.

And this is one area that we are greatly concerned about, plus the fact that although we did have a good system it was not written, and now because of the bill we eventually have to formulate our own tribal law and codes. This can be done, but, like I mentioned, you just can't do these things in a very short time.

And I sincerely hope that in taking our recommendations for us that these things will be brought up in the right perspective so that Indian tribes can be given assistance that they need.

And for this matter, that is all I have to say. But I would like to cover a little bit the area that was asked of the previous panel regarding Indians. I mean where the question was asked, I believe, that because of lack of water that they would have to get into the urban areas.

I do not think that this would be the answer, and I know that, as far as the Zuni tribe is concerned, you couldn't drag them away if they had nothing but sand to live on because that's been our home for years.

But the answer that was brought out a while ago regarding tribes making every effort to bring industry onto reservations, one of our top priority projects, and I think in this way— Our people have not taken readily to moving into urban areas because of the fact that it was brought out by another panel you have to have money to move in. You have to rent a house and get your water lined up and your lights on and everything. And then you cannot get a decent home for a good sized family for perhaps less than \$90 a month.

And if an individual is not skilled in any particular type of work, certainly he would have to accept minimum wages of \$1.60 an hour, and— He's already licked before he starts.

And whereas at home, he's got his home there, and if industry is brought in and even he has to commute to work 3 miles, what is 3 miles? My people go 40 miles to Gallup.

And I think that we're making headway in this.

It was brought out that in the President's message of 1970 Zuni was mentioned three times because we have taken over the total operations of our Bureau personnel and our Bureau programs, and in 2½ years of operating under this system starting with 5 employees back in 1965 we now have 182 tribal employees, and we have 18 Bureau of Indian Affairs employees

out of which two are non-Indian. The rest are Zunis. And under the tribal organization and where job opportunities are obtainable, we have taken other tribes into our programs in supervisory capacities.

And these are things that are planned out. And as we go along implementing our project, and as we go along creating job opportunities by setting up our own shopping centers and whatever is necessary and those other things that go in with a good tourism program, these are actually what Indian tribes are doing.

Zuni is not unique in this. There are many other tribes now who are getting ready to move in the right direction to bring up their economic base up to a better level.

We started out when we went to sell our plan with \$582 as our per capita income. Last January we took a check. It had jumped up to \$906. And as of 2 months ago it has jumped up to \$1,100.

And so with coordinated effort on the part of tribal councils and their people informing them what they really want on their reservations, I believe that in time everything will be brought up even though at a slow pace to a good level.

And I think that one area that has been left out perhaps maybe in your investigations is the heavy industries. Why can't they move out to Indian reservations where they can be given tax concessions for a number of years and create opportunities for Indian people instead of sending a lot of this work over to Hong Kong?

Our people need jobs here. And I think that it's a crying shame when American industries can't give jobs to their people and have to send it to a foreign country just because labor is cheaper. And when you buy a product that is made over there you pay for something that won't last.

And so I think that many areas have not yet been covered.

But another area is also the idea that many agencies, outside agencies, have an interagency jealousy set up that should not exist at all, or interbranch jealousy. "Branchitis" they call it. And I think it's important this be done away with, and everybody work with everybody, because essentially we all work for people. That's our primary objective and our job, especially in an elected office. And where we are supposedly fighting a war on poverty and our agencies are set up as funding agencies, they are jealous of each other.

I think that maybe one agency should be formed and monies come out of that or something. At any rate, I think package funding is the answer to many things on Indian reservations.

And many Indian reservations only need the capital boost to get up to where they want to get. And some of the projects that they have planned out are what we call one-shot projects.

And I think that when these things are done, then other things can be gotten into that would benefit people.

But we have many times been given the impression, or many people have gotten the impression, that the Bureau of Indian Affairs is the almighty. I mean that's where the money flows out. This is not so. The budgeting process is something that we are explaining to our people.

The things we need in budget we do right there at the home base. It goes up to the area and we review it there, and then it goes to the central, then to the appropriations committee, and the damage is done by OMB. But who thinks about OMB when budgets are cut? Nobody. It's always the BIA. And I think this is wrong.

I think that those who have an input like some of the laws that are obsolete, and the Congress don't admit that they made those laws and try to pass the buck to somebody else. This is not right.

And I think it takes all of us working together to set up a flexible program that can do the most good for the most people in many areas, and we haven't yet done that, but I think it should be done, and I know it can be done.

But we have too often made the Bureau of Indian Affairs the whipping boy for the things that come about that is not their fault. Certainly we don't agree sometimes. I think there are many things that in the line of regulations that were formulated years ago and sanctioned by Congress that can be thrown out the window, and we start fresh and whittle down that book of regulations down to a right size that we can use to work with.

And these are areas that I think can be looked into. We hope they will be looked into, and we formulate something that we can use.

In the line of water rights, I am the chairman of the Water Rights Advisory Board for the National Tribal Chairmen's Association, and in this already we see duplication of services where several groups are working on water rights but they are not pooling in their material so that they can make one story when they go to court.

You know, when everybody is telling a different story in court, we are liable to lose cases. But if everybody is united with their information so they can back one another, then we are liable to win cases.

But these are things that we would like to do. Why should

there be animosity existing between groups who are working for the same thing, for the same benefit for Indian tribes?

Water rights is very important to us. An inventory can be made of our water in one of these here. That's all we got down there. We depend on rainfall. But in other areas— And maybe eventually, since we are in the upper reaches of the Colorado River tributaries, we may still get into a suit. Who knows?

But I think that team effort is the answer to a lot of things that are not being done now on that basis. I don't think that it hurts to get everything together in a group working together for one objective, and then we start going into the things that have to be gotten into in the legal aspects of these things.

But we have to be prepared to back each other up, and if we don't do that we are lost. We are sunk. And this is what we don't like to see happen either. And many other areas are having to be considered.

Right at this time I think that one other concern to us is the fact that we try to encourage each other to plan. And planning is the thing that used as a guideline can get us where we want to be. But we feel that too often people without planning demand things, and then things are stirred up to a point where it can be very drastic for everybody, including those who are asking for certain things.

I have a statement here that was presented to me by the Pueblo of Acoma given to me by their tribal governor to present to you folks, and their statements cover education, law and order, and also water rights. And we would like to present these to you for the record.

COMMISSIONER RANKIN. We will be happy to accept it for our record. Thank you.

[Whereupon, the document referred to was marked as Exhibit No. 18 and received in evidence.]

MR. LEWIS. And also I have had handed to me by the chairman of the Midwest New Mexico Community Action Project a letter which refers to a legal action that he said was very wrong, and he wants you specifically, the Commission, to have this letter and to look into this as it concerns people.

COMMISSIONER RANKIN. Thank you.

MR. LEWIS. I would like to answer any questions at this time.

COMMISSIONER RANKIN. Well, I just want to thank you for your careful and very interesting presentation of this matter, and particularly I liked your emphasis upon planning and cooperation and what can be done when you do plan in advance and what can be done through cooperative effort. I wish to go along with you in the emphasis upon these two

points, Governor. I think you have made a very fine presentation, particularly on these two points. I liked them a lot.

MR. LEWIS. Thank you, sir.

COMMISSIONER RANKIN. Commissioner Mitchell?

COMMISSIONER MITCHELL. Governor, your comment about training people to function in a judiciary system is interesting to me. My university has recently begun to develop for nonlegally-trained people, for lay people, practice work or course work—and some of it leading to degree, as a matter of fact—in court administration and the management of judiciary systems. This is the beginning of a new kind of paraprofessional educational trend that I think will spread in this country.

I would be very happy to send you what we have found out about this and what is involved in training lay people so you get efficient and decent administration of judiciary systems, how you get your own people to function in that kind of an activity, and possibly arrange some way in which we can invite some members of your tribe to take that training.

I think you have substantial problems in developing courts from scratch, and I know that the professional people in this field are very expensive and very hard to come by.

MR. LEWIS. Yes. Well, we would certainly appreciate getting this, and also I might bring out the fact that everything that we do we have to gear it to our own speed—I mean all Indian tribes—and move along at our own pace because we want to do a good job, and we want to have the most efficient thing that we can get out of the labor that we put into any program.

And when I get this material, I certainly will share it with my fellow governors.

COMMISSIONER MITCHELL. Thank you.

COMMISSIONER RANKIN. Thank you very much. We appreciate your appearance.

We are now recessed for about 10 or 15 minutes.

[Whereupon, a recess was taken.]

COMMISSIONER RANKIN. Will the hearing come to order, please?

We now have a series of appearances in this unscheduled session. The first person to appear at the witness stand—to present a statement really, not to serve as a witness—is Mr. Paul Bernal, a statement for the governor of Taos Pueblo concerning the administration of justice issues on Taos Pueblo.

Will Mr. Bernal please come forward? Is Mr. Bernal in the room?

Mr. Bernal, I have to swear you in. Will you mind standing and let me swear you?

[Whereupon, Mr. Paul Bernal was sworn by Commissioner Rankin and testified as follows:]

STATEMENT OF PAUL BERNAL ON BEHALF OF HONORABLE CRUZ P. TRUJILLO, GOVERNOR, TAOS PUEBLO

COMMISSIONER RANKIN. You have a statement that you would like to make?

MR. BERNAL. Yes, sir. I have the statement in writing, and I will present it to the Commission.

I would like to take this opportunity to introduce my tribal governor, Mr. Cruz P. Trujillo, Taos Pueblo. This is his statement that I have in my hand. On my right here is our attorney, Mr. Dick Young, and the governor's secretary sitting over here to my far right is Mr. Tony Bernal.

Statement of Cruz P. Trujillo, Governor of Taos Pueblo, before the United States Civil Rights Commission in Albuquerque, New Mexico, on November 14, 1972.

Mr. Chairman, the Taos Pueblo Council appreciates the thoughtful concern for our interests that the Commission has shown by coming out here to Albuquerque to learn about our problems. We feel especially fortunate to have you come at this time because of some recent flagrant violations by non-Indian law officers of Federal and tribal jurisdiction on our reservation. These violations point to more basic, long standing problems which also call for your attention.

Within the past 2 weeks, police officers of the town of Taos and the State of New Mexico violated the boundaries of Taos Pueblo in pursuit of certain Taos Indians who had allegedly committed traffic violations off the reservation.

In the first instance on November 4, town of Taos officers ignored a radioed direction by a BIA Indian police officer to break off pursuit after crossing the pueblo line and continued their pursuit, firing their weapons. Without any consultation with tribal officers, additional town, State, and county officers entered the reservation, brought shotguns from the town, and thereafter repeatedly ignored instructions of tribal officers to put up their weapons and leave the reservation. Even BIA police ignored instructions from the governor's staff to put up their weapons.

The entire force was uncontrolled and disorganized. Town of Taos police shot and wounded an 18-year-old Taos Indian and left him in the mountains miles from any assistance.

A week later, State police again entered the reservation without authority following a Taos Pueblo member alleged to have committed a traffic violation. In this case there was no

shooting, but the governor's authority was ignored and undermined not only by the State police but by the BIA police who lent assistance.

Mr. Chairman, we ask that the Commission conduct a full investigation of these flagrant abuses of territorial jurisdiction and tribal self-government. Uninformed and unsupervised police officers endangered life and disrupted the peace of the community. Unless action is taken in these cases now and the integrity of the pueblo's territory and government is protected, our rights as Indians and as citizens cannot be secure.

These events are instances of long-standing problems. As among most of the pueblos, our law officers are employees of the Bureau of Indian Affairs. At Taos Pueblo they are responsible to and supervised by the Northern Pueblos agency, 70 miles south in Santa Fe, and the Albuquerque area office, 130 miles south. This means that in a crisis situation, their supervisors—the people to whom they are responsible for their actions—are not available to the tribal officials, the people who are responsible for the safety and welfare of the community.

There have never been enough law enforcement officers for the pueblos, and we have repeatedly requested more. But more officers will not solve the problems created by absentee supervision of the officers. What is needed is clear recognition by the BIA of the paramount responsibility of the tribal government for the safety of the community.

When one of the major crimes is committed on the reservation, the FBI is responsible for investigation, and the United States Attorney for prosecution. Despite the fact that there are 24 reservations in New Mexico with a total population of 70,000 or 80,000, neither of these agencies has ever had full-time staff available to specialize in fulfilling this major responsibility in the specialized field of Indian rights and law.

Murders have gone unpunished and countless violations of Indian rights unprosecuted because the FBI and U.S. Attorneys must depend upon staff already overburdened by other duties, with no special preparation or experience for work on Indian reservations, to perform this work as they can squeeze it in.

The language and customs of the Pueblo Indians constitute barriers to investigations and investigators who have no training or experience.

In consequence, our people live from day to day in fear for their very lives, without assured peace and security. These Federal resources must be improved.

Mr. Chairman, we have been appealing for many years for improvement of the Federal Government's performance of its obligation to provide law enforcement services on the reserva-

tions. Our appeals have fallen on deaf ears because people seem to think that the problem is just one of quantity, of sufficient appropriations of money, and that it is up to Congress to appropriate enough money. Additional funds are urgently needed. But the steps should be taken now to clarify the role of tribal self-government in the conduct of law enforcement by the Bureau of Indian Affairs employees who operate on the reservations under absentee supervision, to redress the recent violations of territorial jurisdiction and individual civil rights by local police, and to provide specialists in Indian problems for investigations and prosecutions by the FBI and the U.S. Attorney's office. An investigation and a report by this Commission would help us to achieve these ends.

Mr. Chairman, this is the statement of Mr. Cruz P. Trujillo, Governor of Taos Pueblo.

COMMISSIONER RANKIN. Thank you. We will be happy to receive that statement. And I might add that I will ask the General Counsel here to look into this matter to see under our jurisdiction what possible action is open to us to take or with consultation with other Government agencies to see within whose jurisdiction should come the problem of taking action in this matter.

[The document described is in Commission files.]

MR. BERNAL. Thank you, sir.

COMMISSIONER RANKIN. Thank you very much for appearing. Thank you both.

Next I am asking two persons to come to the witness stand, Samson Miller and Frederick Pesco, if they would come to the witness stand to submit or make statements.

[Whereupon, Mr. Samson Miller and Mr. Frederick Pesco were sworn by Commissioner Rankin and testified as follows:]

TESTIMONY OF MR. SAMSON MILLER, VICE PRESIDENT, MESCALERO APACHE TRIBE, AND MR. FREDERICK PESCO, MEMBER, MESCALERO APACHE TRIBAL COUNCIL

COMMISSIONER RANKIN. You are Mr. Miller? Correct.

MR. PESCO. I am Mr. Pesco.

COMMISSIONER RANKIN. Mr. Miller, I understand you have submitted a statement concerning water rights. Is that correct?

MR. MILLER. Yes, sir.

COMMISSIONER RANKIN. Proceed.

MR. MILLER. Mr. Chairman, members of the Commission, it is with great honor and pride that I appear before you today. My purpose is to present the views of the Mescalero Apache people on a very important subject of water rights.

We sit before you today with a feeling of respect for this Commission and yet with the feeling of concern for our people.

When considering Indian water rights, it is important that you do not lose sight of the original rights of the Indian people. It is well recognized that the tribes have the ability and authority to govern themselves and control their own affairs. This concept includes the right to control the use of land, water, and other natural resources belonging to the tribe.

Earlier in the history of this continent before the reservation system was established, before our white brothers appeared on this land, the Indian was able to use the water without competition or interference. Great care was always taken to conserve this precious resource.

As this country grew, greater demands on the water supply were made. Still, at the time the reservations were being created, it appeared that there was enough water for all. With proper planning this may still be true.

Early in the century the United States Supreme Court recognized the reservation Indians had retained their right to use water found on the reservation. The *Winters* doctrine established that the right to use the water was not given up when various tribes ceded some of their homelands to the United States. This doctrine and cases which have followed it also made clear that the future needs of the Indians were to be accommodated. The *Winters* doctrine also insures the tribes that these rights to water may not be taken away by any State.

It must never be forgotten under that reservation system the land and other natural resources of the Indians were not gifts from the United States. The land and water originally belonged fully to the Indians. The United States was the one receiving the grant. Neither the United States nor any State ever owned the water resources which are now found on the reservations.

Over the years a great development has taken place in the area now called New Mexico. Demands for water increased. Because of the increased competition for use in this limited resource, we are now in fear that our rights which were established long ago may become eroded like the banks of a swift-running stream.

There is every indication that this growth will continue. There will be more people, more cities, more industry. With this growth will come even greater demand for water. More and more people will be asking for what they consider to be their share. We fear that the water resources will be spread

too thin, that the promise of the *Winters* doctrine will become an empty shell.

The State of New Mexico has long recognized the water supply here is not infinite. By statute and by case law it has been decided that all water within the State belongs to the State. This rule must, of course, allow exception for Indian waters.

The laws of the State of New Mexico dealing with water regulations are very thorough and very complex in recognition of the seriousness of the water allocation problems.

We acknowledge the need for regulation of this precious resource which is the life-giving fluid for the earth. But State and even Federal regulations cannot always solve all problems. The famous struggle between the States of Arizona and California for the benefits of the waters of the Colorado River demonstrates this.

Thought must be given now to potential conflict that may arise in the future. The needs of all persons must be considered.

New Mexico is a part of the homelands of the Mescalero people. These homelands are the very foundation of all tribal life and growth. The Mescaleros are fortunate in having a land rich in natural and human resources. The potential exists for great development. But these resources are without meaning if there is no water.

It is the land on which all else depends. Land may be rich in minerals or timber or natural beauty or may be totally barren, wind-blown, incapable of supporting life. The difference is water. Even land rich in natural resources is of little value if the very water that has made it rich is not able to be used. If that water, the giver of life, is polluted by industry, it then becomes the instrument of death. It will eventually destroy even those resources it helped grow.

The effect on Indians is no different if the water remains pure but is taken away by a system of so-called water rights which denies the Indians use of a resource that was always his.

It is said that Mescalero Apache people are a great people. It is said that our organization and development may become an example for others to follow. Whether this is true is for others to judge.

But the promise of greatness is hollow if there is no water. No people can remain great or even remain all without water. Water is the fluid which brings to life all other resources. Water is the key which can unlock the door to future growth. With water we can grow. Without water all hope is lost.

The people of the Mescalero Apache Tribe have developed over the years with the aid of the Federal Government a strong and progressive tribal government and important tribal enterprises. All natural resources of the tribe have been put to use. It is our prayer that these resources, the foundation for our future development, the very cornerstone of our way of life, not be taken from us.

Let there be no neglect or misapplication of the principles of law, water law, and Indian water rights laid down by the Supreme Court.

It is our prayer that the courts will recognize our rights in future years. Let us not lose what we have gained and what in truth has always belonged to us.

Thank you.

COMMISSIONER RANKIN. Thank you very much. That concludes your statement?

MR. MILLER. Yes, sir. I will submit my statement.

COMMISSIONER RANKIN. We will be happy to receive it. Now, I believe, Mr. Pesco, you want to submit a statement relative to education? Am I correct in that?

MR. PESCO. Employment.

COMMISSIONER RANKIN. Employment. I beg your pardon.

MR. PESCO. Yes, I have two statements here that would be quite lengthy to take more time than we would be allotted, so I would like to submit this on behalf of the tribe for the record.

COMMISSIONER RANKIN. We will be happy to receive those statements for the record and appreciate your presenting them to us.

MR. PESCO. Thank you.

COMMISSIONER RANKIN. Thank you both very much. They become now a part of the record of this hearing.

[The documents referred to are in Commission files.]

COMMISSIONER RANKIN. Next is Kenna Harjo, BIA employee, concerning employment practices at SIPI [Southwestern Indian Polytechnic Institute]. Will you stand and be sworn in?

[Whereupon, Mr. Kenna Harjo was sworn by Commissioner Rankin and testified as follows:]

TESTIMONY OF KENNA HARJO, BIA EMPLOYEE

COMMISSIONER RANKIN. Do you have a short or long statement?

MR. HARJO. I would like to have a long one, but I'll try to make it short, I guess.

COMMISSIONER RANKIN. I hope you can make it within the time limit.

MR. HARJO. To start out with, I have been with BIA 5 years, and I am sure that there's a lot of other employees that can share with me what I have to say here because I have talked to a lot of them. I know many of them.

But I feel that I and my fellow Indian employees are discriminated against and always have been by BIA in many cases and instances.

But an Indian has never been given an opportunity to express his feelings or solve his problems until now, I feel. I sincerely feel that this is maybe the first time.

In the past and even now an Indian employee will not speak out or reveal his problems to the administration because of fear of being prosecuted, harassed, pressured, intimidated, being fired on the job, or other reprisals or whatever. I have seen this. I have experienced it, and I know. I have gone through this. And I fought some cases, and I have won them.

So far I have been ahead. And this is the way I'd like to see it. But it's unfortunate to many of my fellow employees.

But my experience is this that I would like to bring out. I have been in other areas and agencies. But I'll just stay with the one I am with now, the school here. And I have seen denial of information that is real important to an Indian employee, denial of equal employment opportunity, the denial of opportunity to utilize and take advantage of training, experience, skills and abilities, denial of training, denial of authority and decisionmaking, denial of better working conditions.

Sure, we have a brand new school out there, but that's not what I am talking about.

And denial of help and services and unfair practices of hiring and promotions—well, I'll start with this unfair practices of hiring and promotion.

Just for example, in this audience I can pick out six right quick. I know these people. They have all kinds of degrees, master's degrees, doctor degrees. Where are they now today right now? They're BIA employees, temporary employees. Why?

And here we have some people that have been in BIA, non-Indian BIA, 30 years. Does it take 30 years to solve our problems? I mean I just believe that you take these young people or young employees right out here, the ones I'm talking about—I know these people. I believe that if you could take them and put them in their positions, I believe it wouldn't take them 30 years to solve some of our problems.

I hope that something could be done about these things.

And to go on, just an example, at the school there was a—

We started with BIA security guards, Indian, all Indian security guards. Today, we have none. It was replaced by non-Indians. Why?

No one—I'm a supervisor out there—no one had told me why. I was supposed to have been their supervisor too, also, but never nothing was ever explained how it would be, procedures or anything. Someone would say, "Okay, we're still their supervisors," and yet they told me, "You would be supervising them," you know, and so forth.

Nothing was ever agreed. I tried to hold meetings where we would all sit down and say, "Okay, this is the way it's going to be." Or students' involvement. Nothing. Students was never involved in a lot of these things out there at school.

But today they were replaced and they are doing something else.

The security Indian guards were trained and had experience. But also I feel that the non-Indians could not or ever will do any better job than the Indian security. I feel that they could have took the Indian security and developed them or whatever. Instead, their positions were abolished. Of course, I had nothing to do with it.

COMMISSIONER RANKIN. You're beginning to run out of time. Can you summarize?

I'm sorry. I hate to do this, but if you'd see this list of people wanting to testify—

MR. HARJO. Okay. This is another problem. We are never given the time, you know—

COMMISSIONER RANKIN. I know it.

MR. HARJO. —to express our feelings.

COMMISSIONER RANKIN. I know. I hate to be in that position. I don't like it either.

MR. HARJO. Okay.

COMMISSIONER MITCHELL. Can I ask him a question?

COMMISSIONER RANKIN. Yes. Could he ask you a question?

COMMISSIONER MITCHELL. May I ask you a question? Specifically about this Indian security guard, the switch from all-Indian to non-Indian, when did that happen?

MR. HARJO. When?

COMMISSIONER MITCHELL. Yes. Over what period of time? Recently?

MR. HARJO. Oh, back in July.

COMMISSIONER MITCHELL. At one point then you had a security force that was all Indian and you now have one that is non-Indian?

MR. HARJO. Yes.

COMMISSIONER RANKIN. How many people on that force?

MR. HARJO. About three. One each night, you know.

COMMISSIONER MITCHELL. Thank you.

MR. HARJO. But this could be investigated, and you will find out, you know.

Okay. Let me—

COMMISSIONER RANKIN. You see what they do to me? They put time on me. Do you see that? So we're in the same boat.

MR. HARJO. Okay. I don't know about that either.

[Laughter.]

But, anyway, I would like to, from my own experience now—my experience now is that, okay, here is a non-Indian comes in and takes my—the position that I have been in, the position that a little GS-3 and a 4 have been acting as a supervisor. Here comes in a non-Indian with a big GS-9, you know. He takes over.

But what about the Indians that have been doing the job? Okay. This has happened to me and the others out there.

I came in in this position as a GS-7 in this supervisory position. For 6 months I was in this position. They would never give me official papers giving me credit. Nothing.

Okay. Not only that, there were all kinds of technicalities that they are violating civil service regulations. Okay. There was no credit of anything. Six months I pulled it, and then I got tired of that stuff. The only reason why I think that I won my case was that I just happened to—had been exposed to civil service regulations.

Because I used to teach it before I came this way. I used to work for an Air Force base, and that's what I— I was an instructor, and I'm still supposed to be an instructor but usually I'm a policeman out there, you know, where I'm at.

In other words, I'm talking about utilizing my experience and training. I have 152 hours of college credit and so forth. Where am I? You know, I'm down here doing the dirty work for a non-Indian as far as I'm concerned.

As far as my fellow employees are concerned, we're doing it for them. Here's a GS-3 and 4. You go out there and investigate it. You will find that this GS-3 or 4 is doing supervisory work where it requires 9, 11, 12. Because they had a non-Indian in there, and he couldn't cut it. Today he's not there and still holding that job because he wanted a leave without pay, and he's not even there today. He will be on leave without pay until maybe in April.

In the meantime, what about us? In the meantime here's a

GS-4 filling his position. He can do the job. Why don't they give him a promotion?

Things like this.

And a student is never heard out there. A student— Maybe one. But what can one student, you know, be heard in? How can he be heard? Students are never heard out there. For that reason—

COMMISSIONER MITCHELL. Would you explain that to me? I'm not sure I know what you mean when you say a student is never heard.

MR. HARJO. We have a student body. We have all kinds— It's not only students. We have all kinds of committees that are supposed to be putting input for this school, you know. But it's unheard of.

COMMISSIONER MITCHELL. Nobody listens to any student?

MR. HARJO. No. That's what I'm trying to say. Nobody listens to an Indian whether he's student or staff. We can never work together because of this, because of somebody— To me it's administration. They always make the decision, "You do this and you do that. You move over here, move over there," and never get our input. Maybe we feel different, you know, about things like that. But never— It's just unheard of.

Okay. For example, they come, they just come out and tell us.

Okay. One thing. They'll never put it in writing because I'm going to use it, and they know it. They'll never put it in writing. They'll just say, "Okay, we don't want your recommendation." You know. I just stand there and say, "Well, okay," you know. I got to have a job so I don't argue with them. But this is what goes on.

I'm not the only one. I mean there are several people who wanted me to represent them from this school. But I don't feel like that I am representing anybody. I am representing myself because I have been through it. But I'm pretty sure that if you talk to other people they feel the same way because I work with them. I'm their supervisor. And they're 100 percent behind me, most of them.

I wrote a letter to you saying, okay, I'm pressured for time and that's what happened. I have been thinking about writing a book. Maybe that will, you know— Maybe I will, and maybe some day you will read my book.

COMMISSIONER RANKIN. I'll look forward to that.

MR. HARJO. But I really would like to.

COMMISSIONER RANKIN. You're going to submit that for the record, are you not? Your statement there?

MR. HARJO. Yes, sir.

COMMISSIONER RANKIN. And that letter is included in the statement?

MR. HARJO. Yes, sir.

COMMISSIONER RANKIN. So we can have that because I think we would want that.

[The document referred to is in Commission files.]

MR. HARJO. Okay. As far as training, I'd like to put this in there, just a little bit more.

COMMISSIONER RANKIN. Well, I have let you go ahead so I'll let you go ahead a little bit longer, don't you see.

MR. HARJO. Also Indian employees are not being trained like they are supposed to. We know about it. Like upward mobility they talk about. You know, they tell you, "Well, we have got all kinds of programs." But we never hear of it.

And yet here's a GS-11, 12's, they go to workshops. Just this past week, right now, they are in session, a workshop. People GS-11, 12's. Most of them has master's degrees and all kinds of degrees.

What about these people on the front lines? What kind of training they would need? You know, instead of people that has all kinds of degrees. They don't need training. But yet they say, "We can't spare you." Here I'm understaffed. I'm a supervisor, but yet when one of my people are sick I have to do their job as proctor or whatever you want to call it down there, policeman or whatever you want to call it. This is what I have to do. Yet they say, "We can't spare you people. You can't go to workshop. We can't train you. We can't have training sessions."

Yet right now they are in process, these people that to me don't even need training.

But coming back to Indian people, here is one that has a doctorate, one that has a master's degree. If they would put them—give him an opportunity to run our own thing, I mean do our own thing, we can do it. I know we can. Because I have done it, and I have been doing it for years.

And I just believe if we can put these people in there I would feel better because I know that they are going to hear me because I can cuss them out without fear, you know, because he's my own kind.

COMMISSIONER RANKIN. We believe you.

So you will submit that statement?

MR. HARJO. Yes, sir.

COMMISSIONER RANKIN. We're glad to have it, and it might do a lot of good. You never can tell.

Thank you for appearing before us.

MR. HARJO. Okay. One more problem that I would like to— Speaking of students now, students have problems. But to me there are no efforts being made to help these people. We have students that have emotional, social, physical problems, and no one is trying to help these people.

COMMISSIONER RANKIN. I think we have a student who is going to testify.

MR. HARJO. Okay. I'm glad he is because I didn't know whether we were being represented or not.

COMMISSIONER RANKIN. Yes, we have one.

MR. HARJO. And they really need help. Me, I say I'm not equipped. I'm not—

COMMISSIONER RANKIN. I think you're doing a pretty good job myself.

MR. HARJO. I do all I can with them, but that's all I can do. But I know that they can be helped.

COMMISSIONER RANKIN. All right.

MR. HARJO. And we do have problems. But I'm glad a student can speak. I mean he will have a chance to speak on our problems—

COMMISSIONER RANKIN. Yes.

MR. HARJO.—as far as authority, and as far as Indian input, I would say it's zero. You know, I mean, they say, "Okay, you have authority," but yet they come back and slap you down so you don't have authority. This has always been— I have seen this all over BIA. And an Indian is just so— He just don't have a chance, that's all there is to it, as far as wanting to do something for your own people.

COMMISSIONER RANKIN. Well, thank you. I think you have made your point very well. Thank you very much for appearing before us.

The next witness is Roger Smith, a student at SIPI. Will you stand and be sworn?

[Whereupon, Mr. Roger Smith was sworn by Commissioner Rankin and testified as follows:]

**TESTIMONY OF ROGER SMITH, STUDENT AT SOUTHWESTERN INDIAN
POLYTECHNIC INSTITUTE**

COMMISSIONER RANKIN. All right, Mr. Smith. Proceed.

MR. SMITH. The reason I come before the Commission is to let them know about the students out at SIPI itself, let them know how there are problems on campus which involve the staff, mainly administration.

There's several incidents which happen involving the staff

members itself which is unbecoming of a GS-11 or a 9, which I already have given a personal copy to Mr. Lovato last week.

Then there are general problems between the students and administration. The administration are not seeing the students' problems. Besides, the school board itself, they just dictate down to the administration, and the administration is dictated right to the student government, and the students themselves is the last ones to know.

Just recently, today for example, they wanted to move all—to cut down on, I think—what is it?—14 or 15 positions, Indian positions, which are held by Indians, to move down, to abolish these 14 jobs and give I guess more money back to operating capital which—to make up for \$41,000 which they are in the red right now.

And I'd like to see why they have to abolish these 14 or 15 when exactly to take five out of the dorms itself which is undermanned right now— But these five in the dorms— There's two in administration and they're making as much as \$11,000 to \$14,000 a year clear. That's take-home pay. And why these five jobs getting terminated when two are getting to stay there? And when there are four main people out there that operate and mainly run the school but still there are these five which are in the dorm which help the student more than these four.

Why can't take part of the administration and cut their whole entire staff to half? Because the administration only takes care of the administration part involving the school. They're not involved with the dorm at all.

I see this time after time. I worked with the employment contractor out there. He's on contract. It's the RCK Corporation. I worked for them part-time. I see more happening on that campus than most students. And I'd like to see more taking of us, and I'd like to see the Commission come out to school and see what exactly is going on to maybe help get some of the problems ironed out between administration and students.

COMMISSIONER RANKIN. We have a question.

COMMISSIONER MITCHELL. Roger, I'm a university president so I'm the "establishment." Tell me what mechanism does exist. Is there a student advisory committee that— You talk about the administration. Who runs your school? Is it the president?

MR. SMITH. The superintendent.

COMMISSIONER MITCHELL. Superintendent?

MR. SMITH. The superintendent of schools.

COMMISSIONER MITCHELL. And he's got an administrative staff?

MR. SMITH. Yes, a list of three.

COMMISSIONER MITCHELL. Is there a student advisory group?

MR. SMITH. Yes, sir. It consists of a student government; president of the student government does sit in—

COMMISSIONER MITCHELL. Is it for real? Or is he just a figurehead?

MR. SMITH. Right now we are trying to get it changed in our student government to make him have more active voice, and the students are trying to get more, but all the time the student is trying to put in to try to iron some of these problems out, which in turn they are shot down by the administration.

COMMISSIONER MITCHELL. So you weren't consulted at all before these changes of today took place?

MR. SMITH. No.

COMMISSIONER MITCHELL. Do they consult with you about hiring new people, new administrative officials, or anything of the sort?

MR. SMITH. No.

COMMISSIONER MITCHELL. Well, as you know, more and more institutions of higher learning and even good secondary schools are learning that you can't function unless the students know what you are doing and share in those activities. I think your comments are very, very interesting. And although I'm not sure how this Commission interacts with your school, as an educator I am very interested in what I hear, and I'd like to explore the Commission's possible implications—certainly in the abandonment of Indian jobs at the expense of other opportunities to keep those people working.

Thank you, Mr. Chairman.

COMMISSIONER RANKIN. In addition to having your rights recognized, it would help also in the educational process? Don't you think so?

MR. SMITH. Yes.

COMMISSIONER RANKIN. As far as students are concerned?

MR. SMITH. Yes.

COMMISSIONER RANKIN. That's what I think also. Does that complete your statement?

MR. SMITH. Yes.

COMMISSIONER RANKIN. Thank you very much, Roger, for appearing.

The next person to make a statement is Felix Calabaza, Santo Domingo Pueblo, who wants to make a statement re-

garding health care complaints at the Santa Fe Indian Hospital.

Mr. Calabaza. Would you mind standing and be sworn?

[Whereupon, Mr. Felix Calabaza was sworn by Commissioner Rankin and testified as follows:]

TESTIMONY OF MR. FELIX CALABAZA, SANTO DOMINGO PUEBLO

MR. CALABAZA. First of all, I want to make a statement that I will try not to take too much of your time. I know you are very concerned about over the time.

But the fact remains that I was dissatisfied over the fact that Mr. Light—or Dr. Light—from Santa Fe unit looked pretty up here, and I want to make a statement regarding that. It's not very long, and I will try not to take too much of your time.

My name is Felix Calabaza. I am a tribal member of the Pueblo Santo Domingo. I want to thank the Commission for the opportunity to appear and testify regarding the improper health care administered by the U.S. Public Health Service Division of the Indian Health.

My testimony is based on personal experience while trying to get much needed eye care for my mother, who is 71 years old.

She had an aggravated abnormality of her eyes which caused her and the family considerable mental anguish due to not understanding what was causing her to go blind. A private doctor, or a private eye specialist, in Santa Fe, New Mexico, later identified the problem as a severe case of cataracts. The condition existed for a number of years, but my mother will not complain due to fear of the unknown.

Finally, in July of 1972 I took my mother to Santa Fe Indian Hospital to get assistance for her. I might explain that she had great apprehension of going to a doctor due to her belief in her own Indian ways. I was able on her first visit to Santa Fe unit to get an eye examination for my mother by an eye specialist in Santa Fe through the Indian Health Service.

The eye specialist told me that my mother had an aggravated cataract condition which was causing the blindness. The specialist advised that an immediate operation was necessary.

The results of my mother's examinations were forwarded to Santa Fe Indian Hospital. Contact was made with the hospital at which time we were told that there was no money available for the much-needed eye operation.

On Friday, July 14, 1972, at a health board committee of the All Indian Pueblo Council, I was approached by one of the doctors of Santa Fe Indian Hospital and asked if I was actively

seeking eye care for my mother. I told the doctor that I was, due to the condition of my mother.

The doctor told me that there was no money available and that there were 37 other Indian people in the same condition who could not get proper care. The doctor went on to say rudely that the monies available were all earmarked for emergencies. The doctor did not identify what constitute an emergency.

I realize the need for ready funds in matter of life and death. But I also realize an emergency for all tribal Indians, Indian people, who live in the dark due to improper eye care. I am not only speaking of my mother, my people who needed eye care, but speaking in general of all areas of health care for my Indian people.

Health care provided by Indian Health Service is a gross injustice because it is inadequate. There are insufficient funds. Certain personnel are not sensitive to Indian needs. And lack of proper facilities. We, the Indian people, did not ask for this care. The United States Government promised this care for the Indian people due to the specific wrong against my people which ranged from hunting and killing my people like animals to medical genocide through improper health care.

We, the Indian people, want this injustice stopped now. We want adequate care, health care, be it eye or emergencies.

I want to thank the Commission again for taking your time in opportunity to testify.

Thank you.

COMMISSIONER RANKIN. Thank you. Are you presenting a statement for inclusion in the record?

MR. CALABAZA. Yes.

COMMISSIONER RANKIN. It is in the record. Thank you very much. We appreciate your coming and making the statement.

COMMISSIONER MITCHELL. May I just ask you whether you felt that the Commission's discussion with Dr. Light was not aggressive enough or that we didn't go deeply enough into these matters?

MR. CALABAZA. I certainly was dissatisfied because of this. Even though my mother has been taken care of partially, but she still needs additional care. I am also concerned about my people who may need the same care but are unable to get the needed care.

It took me over a month to get care for my mother, and I hate to think how long it will take for my Indian people to get care who do not have someone to speak for them and are at the mercy of PHS doctors.

MR. POWELL. Mr. Calabaza, I think that part of your com-

plaint has to be understood to be against the Congress of the United States which provides the funds.

There was substantial testimony, most notably from Dr. Kasuga, on the business of the elective approach of the Bureau of Indian Affairs with respect to problems, surgical problems and other problems, which are admittedly needed but for which they don't have funds. Now, these problems, if they are permitted to continue, become emergencies, and I think that was acknowledged.

Part of the problem has to be with the Bureau of Indian Affairs, but a significant part of the problem has to do with the lack of sufficient funds.

I don't disagree with you at all, but I think if you listened to that testimony very closely you would have found that many of the problems somewhat similar to yours, glaucoma— I'm not a doctor so I don't know whether cataract is a completely different kind of problem. I rather suspect that they are the same, generically the same kind of problems. They both have to do with eyes.

I'm sorry you feel that we didn't question the witnesses aggressively enough, but I think a reading of the record will show that the points that you are making were made. They were not made perhaps as dramatically because you have had a personal experience. You feel very strongly about it. Very rightly so.

But the points were made. We did discuss with those doctors the very problem you are discussing. And I'm sure that one of the recommendations we will make is that more adequate funds be given to the Indian Health Service.

MR. CALABAZA. I might elaborate. I know many times there may not be enough money available, but I am concerned about the attitude with which the limited services are provided.

MR. POWELL. I see.

COMMISSIONER RANKIN. This is a good point.

MR. POWELL. Thank you very, very much. We appreciate your testimony.

MR. CALABAZA. Thank you.

COMMISSIONER RANKIN. The next statement comes from Teo Tafoya, BIA employee, concerning employment practices.

Will you stand and be sworn in?

[Whereupon, Mr. Teo Tafoya was sworn by Commissioner Rankin and testified as follows:]

TESTIMONY OF MR. TEO TAFOYA, BIA EMPLOYEE

COMMISSIONER RANKIN. Thank you. Take your seat.

MR. TAFOYA. As you mentioned, sir, my part will be on job

discriminations. But before I proceed with that, I certainly would like to thank the Commission for allowing us to bring our problems to you, hoping that we can get some relief and help, so that our Indian people will be helped so that they can improve on the education they are seeking.

My name is Teo Tafoya. I am from Santa Clara. I have a BA degree, an M.A. degree, and about 16 hours beyond M.A. degree.

I am rather upset over our program at the Albuquerque Indian School from many standpoints. One is very little job opportunity or promotion is provided for our Indian staff, as some of my previous predecessors here have indicated. They are having a great deal of problem in connection with not being considered for promotions or allowed to improve on their education.

I am concerned greatly for our Indian boys and girls because I am concerned with the quality of education they are being provided. They are being provided with education, but I do not believe it is adequate.

By that I mean we, as Indian people, know we may not be in level with the non-Indians as far as the provision of knowledge being given to our Indian people at the Indian school level. I do know that, if we had the proper type of personnel both in the administrators and in the teaching staff, we could certainly benefit. That is, the Indian child can benefit.

By that I mean today we find that not so much is being provided as far as the high level of education that should be provided at the Albuquerque Indian School.

Now, if I feel that— I know if we have Indian administrators who are concerned with the well-being of the Indian child, certainly they would make those provisions.

But today we find that the administrators certainly are not concerned with the welfare of the Indian child, and they do just enough to get by. I feel that they tell you, "We are doing all we can," but I know as a fact it can be improved greatly. But it can only be improved if these people are Indians.

Now, the reason why I know it can be improved is because some of us have grown up on the reservation and do know, and we are conditioned to the fact that we know what the Indian child needs, what the Indian child's problems are. But I do not think the non-Indians have that knowledge to where they can make provisions for the welfare of the Indian child.

I know that many of our dedicated teachers that have been employed not just too long ago were asked to retire merely because of age, merely because of the dedicated procedures they have been following, meaning that they are concerned

with discipline. They are concerned with helping the Indian boy and girl.

They say, "We will hire younger teachers." Certainly young teachers are all right. But I think they have to be seasoned and conditioned to know the Indian child that much better. By that I mean you have to grow with the Indian child to be able to know his problems, to know his needs, in order to accomplish that need.

And I have no objection toward the younger teachers, but I know if they were given this opportunity with a better knowledge, better training, they can do the job.

On many occasions, students have been used for experimentation and exploitation such as testing in academic achievement and psychological behavior by administrators who are working for their advanced degrees and other people from the universities and colleges. The above have been conducted on students without the knowledge of their parents. And I feel on such items, if we are going to have to experiment and exploit these children, I think we ought to have a written statement provided by the parent giving an okay whether this should be allowed or not.

I feel that the administrators can certainly work with the staff so that they can do a better job to understand, to improve. I feel that if we are going to improve we need to have an advisory board, an advisory committee that would work between administration and the rest of the staff.

As we have now, the administrators hold their meetings, have their meetings, or the school board hold their meetings. We don't get the communication what takes place in the school board meeting or in the administration.

We did have a so-called steering committee a couple of years ago. Last year it functioned, and it only functioned up to about the last part of May. Now, that group was doing a wonderful job, meaning they were more or less the onseakers between the staff and the student body plus the administrator—not the administration but the general staff. But they did away with that group. And we have no one in between those two groups.

So I feel that some form of group ought to be set up, a committee, whereby this group can work better, in a better understanding way for the benefit of the Indian boy and girl.

I might end up by saying that having been a dedicated teacher at the Albuquerque Indian School—I have worked there for over 21 years—that the present administrators have never approached me on the following: advanced promotion, employment opportunity, upward mobility, incentive award,

and many other opportunities offered by the Federal Government—knowing the fact of my advanced degree.

COMMISSIONER RANKIN. Well, thank you, Mr. Tafoya, for this statement. You are presenting it to our clerk?

Thank you very much.

[The document described is in Commission files.]

MR. TAFOYA. Thank you.

COMMISSIONER MITCHELL. May I make a comment?

You know, Mr. Tafoya, you are touching on one matter among others that is of special interest to the Commission when you talk about experimentation with people without their permission. We have had some reason to be concerned about some aspects of this in medicine where minority people are occasionally used as experimental subjects, and not necessarily minority people but just old people or people who are particularly susceptible to inducement to this sort of thing. People in prisons, for example, are used as subjects.

And one of the things that has caught our eye is the right of any human being to decide whether or not he—or, if he is a minor, his parent—to decide whether he or she shall be exposed to any kind of test for any purpose they don't want to be.

It's good to hear you about that, and I think you are pointing to a serious problem.

MR. TAFOYA. That has been practiced now for a number of years, and I know it's a fact. I can certainly testify further if necessary, if need be.

COMMISSIONER RANKIN. Well, thank you.

MR. TAFOYA. Thank you.

COMMISSIONER RANKIN. The next statement comes from Mr. Delphin Lovato, chairman of AIPC, who wants to make a statement concerning the administration of justice.

Is Mr. Lovato in the room?

[No response.]

We will call him again later to see if he's out getting a sandwich maybe.

The next is Mr. Chewiwi, Mr. Jose Andres Chewiwi, Isleta Pueblo, concerning BIA employment.

[Whereupon, Mr. Jose Andres Chiwiwi was sworn by Commissioner Rankin and testified as follows:]

TESTIMONY OF MR. JOSE ANDRES CHEWIWI, ISLETA PUEBLO

COMMISSIONER RANKIN. You have a statement to read?

MR. CHEWIWI. Yes, I do.

COMMISSIONER RANKIN. Good.

MR. CHEWIWI. I come before the Commission because of an

experience I have gone through in the past week concerning employment with the BIA.

I was employed by the Southern Pueblos agency for approximately 2 years on temporary employment, assigned to the irrigation department, and I was earning neither sick nor annual leave. And without prior notice on Friday morning October 27, 1972, I was advised that I was being terminated as of that day due to lack of funds.

The job I had required a lot of driving, and, therefore, I was issued a Government vehicle driver's license. And during my employment with the Department, I did a lot of driving with Government vehicles. And a vacancy for the position of motor vehicle operator with Southern Pueblo agency receiving warehouse was posted so I submitted my application for the position. On November 8, 1972, I was informed that I was the best qualified for the position and was selected.

On Thursday, November 9, 1972, I reported for my physical. And examination was completed and results were returned to the office on Friday, November 10. Friday evening I was informed I was hired and was advised to report for work on Monday, November 13, 1972.

I reported to the job, and I started my job on Monday that day and worked all day. Then around 2 o'clock in the afternoon I received a call from the office and was told to report immediately.

So I reported over to the office and that's where I was informed that I had been taken off the job as of that day due to my right eye disability which occurred during my service in the Army.

When I was hired for this position, this was known to them, as I stated in my application. And before when I was previously employed with the department of irrigation, they had already known that. And the job of motor vehicle operator requires a Government license which I already had. One of the safety officers came down from the department—I mean from the area office—and brought with him the safety manual and read me a paragraph in the manual that stated that for unlimited driving I had to have vision in both eyes. And they didn't tell me that before they had hired me.

And after I was already hired, then they come up with this. And I had only worked one day, and I was ready to take the job which I knew I could handle. And that little technicality in the regulations destroyed my hopes for that job.

And they told me that they were sorry and, you know, I wouldn't have the job. So that destroyed my hopes, and I didn't

feel that I should be told to leave that job because they had hired me and they told me that I was the best qualified and they looked over my application and my medical records.

And, besides, what really got me that job was my 10-point preference as a veteran, a disabled veteran, and the same reason for my appointment made me lose that job.

COMMISSIONER MITCHELL. Could you take an ordinary driver's test in this State and pass it? Is your vision good enough for that?

MR. CHEWIWI. I took it and I have a State license for this State. It requires a State government—a State license in order to have a Government license, and I can see no reason why they would reject my application.

MR. BUGGS. Did they offer you any other alternative?

MR. CHEWIWI. Well, they never did. All they said was they were putting me back in my previous position as a temporary laborer which I was before, the past 2 years, and I wasn't ready to take that because I had already been hired for this permanent position.

COMMISSIONER RANKIN. I take the liberty of suggesting that the staff look into this matter in your behalf and see what action can be taken in this particular case.

MR. CHEWIWI. Because the Veterans Administration never wrote me 100 percent disabled. And due to this condition I am always cautious of my driving and probably have a better record than any guy with two—perfect vision in both eyes.

COMMISSIONER RANKIN. You think this was an excuse, not a reason?

MR. CHEWIWI. It must have been. I can't really say. But they had already gone through my application and hired me, and I worked one day, and then they made up their mind to let me go.

COMMISSIONER MITCHELL. Mr. Powell, just— He's gone. Well, Paul, you know, there is such a thing as discrimination because of physical handicap. Does that fit in anywhere? It's unusual for the Commission to have this problem before it, but you can be discriminated against. I happen to be a disabled veteran myself although I have never been in your particular situation, but I have often thought to myself that there must be a lot of people, you know, who give an arm or a leg for their country and who then get discriminated against.

What laws protect anybody from that?

MR. ALEXANDER. There are certain laws of the Labor Department and some States have specific statutes, like New York State which provides against discrimination on the basis of a handicap. It's not specifically within our jurisdiction.

However, given the Indian preference provision in hiring and the extra step that BIA should be taking, it's appropriate for us to look into it.

COMMISSIONER MITCHELL. I think we should.

MR. CHEWIWI. I hope something will be done about it.

COMMISSIONER RANKIN. Thank you. You will present your statement to the clerk?

MR. CHEWIWI. I will.

COMMISSIONER RANKIN. Thank you very much.

[The document referred to is in Commission files.]

The next person to make a statement is Consuelo Bird concerning health services.

Is Ms. Consuelo Bird in the room?

[No response.]

If not, we will hold her testimony in abeyance then.

The next person to make a statement—I used the word “witness” but really it should be person to make a statement—is Ms. Jiron who wants to discuss something about the BIA Indian School.

[Whereupon, Ms. Jiron was sworn by Commissioner Rankin and testified as follows:]

TESTIMONY OF MS. REYECITA JIRON, BIA EMPLOYEE

COMMISSIONER RANKIN. Won't you have a seat, and we will listen to you.

MS. JIRON. Mr. Chairman, I do not have a written statement, and I will try to be as brief as possible.

I believe my heading under discrimination was not accepted when I filed a grievance complaint against my administrators 2 years ago, and I want to bring two things before you this afternoon, and I don't want to go into a lot of detail concerning my grievance complaint.

But to make a long story short, I was in a serious auto accident in November of 1969, and I used up all my sick leave and the borrowed sick leave that I had and went back to work the following August to be back to work before school began. I teach at the Indian School, and I have been with the Bureau of Indian Affairs for 24 years.

At that time, not knowing the procedures for filing complaints and all of that, I filed it under a grievance complaint, and my representative was a cousin of my husband who is also Indian, who is in personnel in the Navajo area.

And I had a hearing in January of 1970, at which time my representative told me, after the hearing and all, that the final decision was to be made by the area director, Mr. Olson, and he

asked that we request that this be made by Commissioner Bruce instead.

And to my own way of thinking, all of this, of course, is still part of management. And, at any rate, the only thing that I have are the findings from the hearing officer, Mr. Leon Henderson, who was from Denver, Colorado. That's all that I have—the findings—at which time he said that I had every right for consideration because I was a veteran employee.

And all of this, the transcripts, the findings and all of this, are in the hands of Mr. Lovato.

And the only reason that I am bringing it up now is because when we brought up the question of discrimination we were told that we had to go through other procedures, and, of course, that would have taken more time. It had already taken a great deal of time. I was physically disabled. I went through a lot of mental anguish, and I just didn't want to go through it again.

Therefore, I decided— My family thought it best that I just do the best job that I knew how. I am a teacher, and I believe in doing the best for my students, and so I have worked hard. I have tried to do the best to meet their needs and to meet my responsibilities.

The other thing that I want to bring up at this point is that my representative at that hearing who has been in personnel for a good number of years in the Navajo area applied for a job with the area personnel office here in Albuquerque. This job was advertised in June, and the closing date was June 23. He applied for that job, a GS-12 position, and he applied for another job here in Albuquerque because he wanted to move his family for a long time to Albuquerque.

Well, he has appealed to the All Pueblo Council since he's part Isleta. And he has made many contacts to find out why he has not been given this job. And he was told it was due to the lack of funds. And my feeling is that that job was already budgeted and I really don't understand why he has not been given the job.

It's the same position, a GS-12 position, that he now holds except that he thought that there were more chances of advancement here in Albuquerque.

And we do need people of his stature. He is a devoted, dedicated employee. He knows the needs of our Indian people. We need more people like him— And I wasn't going to go into personalities, but his name is Joe Sevilla. And he has even talked to people in Washington, and that job has not been filled yet. It's still open. Yet the closing date was in June of this year.

And those are things that I want to bring before you, and I don't know whether this was because he was my representative at this grievance hearing. And he, of course, was more or less against another person in personnel that is seeking this job that is non-Indian here at the area office.

I thank you for listening to my statements, and if there is anything that I need to substantiate I will do so in the time allotted.

COMMISSIONER RANKIN. Within 60 days.

Thank you very much for your statements. We're glad to have them.

The next person to make a statement is Mr. Joe H. Herrera. Mr. Herrera, will you remain standing?

[Whereupon, Mr. Joe H. Herrera was sworn by Commissioner Rankin and testified as follows:]

TESTIMONY OF JOE H. HERRERA, MEMBER, INTERTRIBAL INDIAN SCHOOL BOARD, SOUTHWESTERN INDIAN POLYTECHNIC INSTITUTE

COMMISSIONER RANKIN. You are speaking telling us about Indian school boards? Am I correct?

MR. HERRERA. Yes, sir.

COMMISSIONER RANKIN. Okay. We will listen to you.

MR. HERRERA. I am going to have to rely on my notes here.

COMMISSIONER RANKIN. That's all right.

MR. HERRERA. It won't be too long.

I am a member of the Intertribal Indian School Board for Southwestern Indian Polytechnic Institute. And I won't repeat this long name. I'll just say "SIPI." And I am its past chairman. And our major concern is that there is no clear definition of our responsibilities in connection with the school from the Bureau of Indian Affairs.

The two people who testified, Mr. Roger Smith and another employee of SIPI, certainly justify. And it is related to their testimony.

On May 26, 1972, in its regular monthly meeting, the board took action to approve a constitution and bylaws in which we outlined the policies, guidelines, and procedures under which the board would operate. While we continue to operate under this approved document, we have had no response from the BIA as to their approval or disapproval of the constitution and bylaws of the board. So, in effect, we are working in a vacuum, not knowing whether we have any authority or not.

We have appointed several committees consisting of student body, school board, and administration representatives who are reviewing, evaluating, and will eventually recommend to the board for its decisions—its findings, that is—on all programs of SIPI from curriculum to budget. However, we are

concerned that when we have done all of this work and taken action, it is possible that this may be to no avail or be of no impact on the operations of the school if we are told that we have no authority.

One of the projects just concluded was the development of a constitution for the associated student body at SIPI, which the board approved at its regular meeting on Monday, November 13, 1972, after it had been approved by majority vote by the student body.

This constitution was developed with a full participation of student body representatives and developed with the full participation of student body representatives, and it includes, among other things, a student judicial system which establishes guarantees for the civil rights of students in disciplinary cases.

It is the feeling of the student body and the board, as well as the administration, that a constitution tailored to the special needs of the students at SIPI is best for the operation of the school. However, we now understand that the central office of the Bureau of Indian Affairs is seeking to impose a national civil rights program for students on all schools regardless of given school situations. Our school board has already gone on record opposing the national program applying to the special situation we have at SIPI.

Another situation which is critical is in this area of funding for operations of the school. We are continually asked to support budget requests of the Bureau for education purposes, but once the money is received by the Bureau we seem to lose our influences.

Consequently, SIPI is being asked to operate under the same budget for this school year as for the last school year. This is impossible in view of continuing rises in cost of materials and services.

What we don't understand is that the BIA is receiving more money for educational services, but this money does not reach the operating level at the school. We hear of our education money being siphoned off here and there for a variety of special activities before we are aware of what there will be left to operate schools.

It would appear to us that where we have students already on board in the school the highest priority for funding and personnel should be given to those programs which serve these students. The school board has already gone on record to that effect.

We believe that some procedure should be established so that we are not only consulted to help obtain funds for educational programs but that we also be consulted when allocations

of funds are made after their appropriation so that our schools can benefit from the increases in funds provided by the Congress.

I just want to cite one particular case which illustrates the concerns, and the two certainly which have been given here to you are examples. And this is promulgated not necessarily just by the administration at our school but certainly by the central office because it has become permissive in many respects, and so they let this thing go by. And the one concern that I would like to point out is that we as school board members have— And that is the case involving an employee at SIPI.

We operate a full-year program at the school because we offer a variety of terminal vocational courses of different length of time. This employee requested one year's educational leave without pay. Because of the advertised offerings to the students who had already enrolled in the course, the request for leave this year, this school year, was denied by the administration, and the school board supported the decision of the administration. Our decision was based upon the fact that we had students who needed the instructional services of this teacher.

The teacher appealed the decision to the Commissioner of Indian Affairs, and our decision was reversed. The teacher was not only given one year's educational leave but was given leave with pay. The teacher also has a scholarship stipend and has served notice that she will not be returning to SIPI when she completes her education.

And she's a darn good looking woman—and not married.

[Laughter.]

So the position we are in is this: The rights of the employee were considered paramount to the rights of the students. The school is paying the full year's salary without any service from the teacher. And we will be denied any improvement in skills that might be learned in the year's education. And, further, we carry that position in our personnel ceiling limitation so that it requires adjustments to replace her.

It is frustrating to the members of our school board to have its decisions summarily dismissed as if they were not even considered by higher authority within the Bureau of Indian Affairs. One wonders about their claimed desire for school boards and their apparent lack of interest after the school boards become operational. If this was just to be so much window dressing, then I can speak for all members of the intertribal school board in saying that we are not interested and we would just as soon terminate our existence because we only serve as rubberstamp.

We hope that the central office in Washington will set up an

office of Indian school board relations to work with the many Indian school boards now in existence so that a channel of communications will develop and our decisions be given full faith and credit.

We more than any other group are interested in the education of our young people because we realize that the only doors of opportunity for them will be through good, sound educational programs. This is our goal to which we are working, and it is hoped we will have the cooperation and support of the Bureau of Indian Affairs and not be frustrated by their inaction or adverse actions against the wishes of not only our school board but other Indian school boards throughout the country.

We have other things that we have implemented there, for instance, like the constitution tailored to the special needs of students at SIPI, which is best for this kind of operation as I have already indicated in my opening remarks.

I do have some questions because it worries us and concerns us with respect to the role that the school boards have in this situation. What does this mean? Do school boards have authority to do what?

Way back in January 1971 a resolution was developed and forwarded to the Commissioner of Indian Affairs, and we have not heard anything or any response to this resolution. This took place here at the University of New Mexico, to establish such school boards in various areas.

The Northern Pueblos here just last week held a similar workshop in Taos, that is, on October 31, 1972, at which time Bureau of Indian Affairs education director from Washington, D.C., the same man that was to make a speech in Seattle, Washington, on November 3, stated:

"The Federal law and the BIA manual prohibit real action on the part of school boards in matter of personnel, budget, and et cetera. If school boards want this real control, they must contract for the total school operation."

Now, this is a problem. At Taos one statement was made, and 4 days later the BIA education director exploited the fact of Indian involvement in school boards.

These are some of the specific examples of hiding behind a manual, and certainly this is one of those manuals that is obsolete, paternalistic, that should be changed. And I will enumerate this.

Our own school at SIPI is a different school, has a different concept, has a different approach to people and jobs. The classification section of personnel insisted that all jobs be fitted to the traditional titles and series. The manual covers only programs of elementary and secondary, whereas we have

students out there averaging all the way from 18 through 26 years of age.

The result: SIPI is now trying to work its way out of ceiling problems created by staffing patterns and job series written for schools of a type other than SIPI. Classification was correct, yes. The manual did not provide for the special nature of SIPI or classification did not want to be flexible.

It is very easy in bureaucracy to hide behind written guidelines. People programs do not lend themselves to manuals. We need revisions in this, as I already indicated, obsolete manual, and really put teeth in so that the school boards can have some authority.

The other question is, what effort has been made to bring about change for Indian school boards? Contract school operation or what? Is contract school operation apt to bring about the same problems that have developed as a result of the act that provided for termination of BIA service for a price?

I'm sure that there are staff services available to contract schools, but what staff is available to contract schools? What happens to career employees? What about the return to BIA status? Once out, always out.

COMMISSIONER RANKIN. Thank you very much. You will give your statement to our clerk?

[The documents referred to are in Commission files.]

I am going to give our stenographer a 5-minute recess. He's having a rough time over there and needs a little bit of time.

COMMISSIONER MITCHELL. May I just comment if Mr. Herrera will give me a minute?

You just touched on a few things that maybe I can at least respond to quickly. One is I don't know why the Bureau of Indian Affairs budget isn't public. But if there is a budget—it's a public agency—it should be available to the school board, and you should, therefore, have a partial answer to some of the questions you are raising about where is the money going if it isn't going into SIPI.

Second of all, I have the same problem you are talking about with respect to people who leave, who take leaves, and some of my people aren't even pretty and unmarried.

[Laughter.]

What happens is you accumulate a leave as a teacher in most institutions and then at the end of 6 years at my school you are entitled to a sabbatical year. It is considered a very good thing to get away from your work, providing you go some place where you improve your ability when you come back. It is not considered nice to go away and not come back.

What you might consider doing in the event that you run into this kind of situation and have to have someone who quits and have to carry her salary and not have a teacher is to set up a reserve for the leaves of any of your faculty, so if one of

them does go and you have to hire a replacement you have got the money in a reserve.

You have raised a few other things we haven't got time to talk about, but they are terribly interesting questions, and I must say I wish I had a board of trustees with people like you on it, and I wish most public school systems had school boards with members who think the way you do, because what you are looking for is genuine involvement and a chance to make for a better school.

Now, the problem is—and I have been a school board member and a university president so I have been on both sides of this—theoretically school board members shouldn't run the school. They should develop the policies which help people who run the school run the school.

There are great dangers in school board members running schools because then you get into the effect they have on the way teachers are free to teach sometimes just the truth. Someone has to be the professional in a school. On the other hand, there should be great opportunity for school board members to be involved in the decisions that are being made and to be aware of them before they are made.

There is no easy answer to your problem, and, on the other hand, if you are that interested in SIPI, I would really be very aggressive in pursuit of the administration of the school in insisting on a look at the budget and in challenging any decision that is made that you don't have at least prior knowledge of and a chance to react to.

MR. HERRERA. Commissioner Mitchell, in response to your comment with regards to the person that perhaps may have accumulated some leave, it was the understanding of all of those who were hired at SIPI—the fact that this is an all-year-round—

COMMISSIONER MITCHELL. That was a bad decision, I must say. You're absolutely right.

MR. HERRERA.—operated school. Why single out one person?

COMMISSIONER MITCHELL. Not only that, but any really dedicated teacher will not walk off and leave students who—Heaven knows it's hard enough to find young men and women who really want to go to school and learn something and use it. When you have them and they have registered and they are ready, it's an unprofessional act on the part of a teacher to leave, and it's a ridiculous thing in my opinion for a school board or a school administration or whoever did this to just blandly accept that kind of a leave and accept it at the outset

knowing that the person wasn't coming back. It doesn't make any sense.

MR. HERRERA. Mr. Commissioner, one brief thing if you will permit me. I am sure that this will not come up. But I have a complaint of special Indian days that may be of esoteric nature and that are of great significance to the Indian people are not recognized by the employers. I'm ready to deliver a letter to a person who was fired from his job because it took two more days that he hadn't anticipated because he was involved in Indian religious rites.

Thank you, sir.

COMMISSIONER RANKIN. Now we will have the recess for 5 minutes.

[Whereupon, a recess was taken.]

COMMISSIONER RANKIN. Has Consuelo Bird come back into the room and desires to make a statement?

[No response.]

Has Delphin Lovato, vice chairman, AIPC, who expressed the desire to make a statement, returned to the room?

[No response.]

We will then hear from Robert P. Smith on an all-Indian business. He has asked to make a statement.

[Whereupon, Mr. Robert P. Smith was sworn by Commissioner Rankin and testified as follows:]

**TESTIMONY OF MR. ROBERT P. SMITH, PRESIDENT, AMERIND
MANAGEMENT DATA SYSTEMS COMPANY**

COMMISSIONER RANKIN. Will you have a seat, Mr. Smith? You are with Amerind? Is that right?

MR. SMITH. Yes, sir. I just have notes. I really don't have a story as such.

However, I have sat and listened for 2 days here to the discussion and this type of coverage here— I'm a little bit nervous.

COMMISSIONER RANKIN. We have been that way for 2 days.

[Laughter.]

MR. SMITH. Have you? Well, great.

I'm Robert Smith. I'm the president of Amerind Management Data Systems, which is a totally Indian-owned and operated management consultant and data processing company located here in Albuquerque.

I deal in the business world effectively. I have sat here the last 2 days— Yesterday I heard my banker say—by banker too—that there was no Indian businesses here, that there had been no Indian applications for loans, that there had been no

Indian applications for loans disapproved by his bank that he was aware of. He may not have been aware of them because he is not the man that deals at the loan level. He is an executive vice president.

But I have sit here all through this effectively and I have thought about the present, I guess you'd say, administration's policy of self-determination for the Indian people.

Myself, I'm an urban Indian. I'm from Oklahoma, Cheyenne, Cherokee. I have, though, some compassion for my Indian brothers here on the reservation areas. I have some knowledge of what they are about to face in the self-determination effort.

I know that self-determination is a big word—a couple big words—but it means economic development. And economic development must have finances and education to be able to be successful.

Now, I have sat here and we have covered the BIA and the Indian health organization, but I have not heard one mention of OMBE, the Office of Minority Business Enterprise. I have not heard mention of the Small Business Administration in this area, HUD [Department of Housing and Urban Development], the other agencies that are involved in self-determination for the Indian people.

Well, I can't say it today because I know they were looking at an Indian employee. But 2 weeks ago I would have defied you to find an Indian employee in the Office of Minority Business Enterprise. Yet they are charged with the development of minority business enterprises for the minority peoples. Now, I don't say that this—I don't know whether this is by—I have no logic behind it. I do know the purpose of the Office of Minority Business Enterprise as it was established.

In Albuquerque I can assure you that the Indian people receive—Indian and black people, and this is amazing from the Office of Minority Business Enterprise—receive only tokenism support, only tokenism.

I attended an OMBE awards seminar 2 weeks ago or about 3 weeks ago where I was embarrassed because I was asked to invite Indian people, the Indian governors of the pueblos. I did so, me and my staff. We were assured that they would be given proper recognition and consideration.

There was approximately 75 awards presented at this seminar for minority businessmen. There was two Indians and one black. That should speak for itself.

I will defy you to find an Indian man in the local SBA office

who has to service 73,000 Indians. I'm not positive, but I think I can say the same thing for the HUD.

And what I am trying to say, gentlemen, is that it is a total Government operation, the total combined effort of all the agencies, to make this thing work.

There is a very, very definite lack of training for the Indian people to administer their own business affairs.

You talk about employment. We have 18 employees in our corporation at the present time. Fifteen of them are Indian. Three of them are Spanish. And the other two— Well, 15, 18— There's two I missed somewhere. There has to be 13.

When we say "successful Indian business," I can look out in this crowd here and I can show you a couple more successful Indian businesses. I hope I am successful. We are trying to develop a viable business. We have over half a million dollars of contracts currently. I hope that we can continue to sustain operations. We deal not only competitive in the local community but we deal nationwide.

But my point in here was to point out that not only the Bureau of Indian Affairs is involved and HEW, which has Indian Health Service, but all agencies. And those agencies that I mentioned specifically are involved in this up to their necks. And the type of support that the Indian people have been getting from these agencies lacks something.

COMMISSIONER RANKIN. Are you too far from Washington? Does that enter in?

MR. SMITH. I don't know that this is a factor. I do not believe this, sir, because we have a lot of communication here with Washington. We get a lot of rhetoric and a lot of pats on the back and say, "Go after it," and, "Get with it," this type of thing. But, as you know— I can speak to Mr. Powell here and Mr. Buggs. I'm sure that you can substantiate that it takes money to develop businesses.

MR. BUGGS. It does.

MR. SMITH. Economic development. And it takes training to be able to administer the businesses and perform the technical aspects of this thing. And the Bureau of Indian Affairs just doesn't have it as far as that total thing. It takes the total thing.

MR. BUGGS. Mr. Smith, I wouldn't want you to think that the Commission is unaware of the areas that you mentioned that we did not go into here. As you may know, this is the first of two hearings that we will be holding this week, but there is a plan to hold additional hearings around the country on the

problems of Indians and a national hearing, at which time—between now and the end of that national hearing—I think we will touch on every facet of every problem, hopefully, that American Indians have, including the whole issue of economic development.

MR. SMITH. I appreciate that, sir, and I appreciate the opportunity to speak to you really because I see Indian people coming to me asking for advice. In fact, right now with OMBE I have a proposal that has been laying there since early spring to establish an Indian business development organization, and this can be verified with some of the local people. All Indian Pueblo Council supported me in the establishment of this. And we got some indication from Washington that this would be approved. However, this is like November, and it's still there.

We need to be able to establish viable Indian business on the reservation and off the reservation. These people must be able to be able to establish their business enterprises in the industrial setting. They must be taught how to manage them, do their processing. They must be given this type of support if they are going to have self-determination. Otherwise, forget it.

Thank you.

COMMISSIONER RANKIN. Thank you very much.

MR. BUGGS. Thank you.

COMMISSIONER RANKIN. Thank you for your testimony.

The next person to make a statement is Mr. Victor Sarracino, a BIA employee serving on tribal councils.

[Whereupon, Mr. Victor Sarracino was sworn by Commissioner Rankin and testified as follows:]

TESTIMONY OF MR. VICTOR SARRACINO, BIA EMPLOYEE

MR. SARRACINO. This testimony that I am about to give has some reference to the memo that was recently issued by the central office out of Washington regarding Federal employees' being a member of the tribal council or a member of a committee or having such affiliations.

Before I go on I would like to say that Governor Anaya was sorry that he could not be here today. I advised him that his name was called upon, but he was in the middle of a session. Therefore, he was unable to be here, and he sends his regrets.

This piece of paper here or memo that I have in my hand was made known to me probably about a week after it had been received by the central office or the area office here in Albuquerque, and I would like to read it so it will be made a part of the record.

This telegram was directed to the governors and some of the superintendents, and it states:

"From time to time in the process of contracting with various firms or organizations we have discovered either before or after the contract is executed that Bureau employees are members of boards of directors or hold some type of office or position in the firm or organization. Such arrangements raise the conflict of interest issue which could cause a firm or organization to be eliminated from consideration or have its contract terminated.

"Usually when a Bureau employee is discovered to be in such a situation the employee has been asked to relinquish those functions and has done so without hesitation. Because of the seriousness of the conflict of interest issue situation, it is considered in the best interest of all concerned that the Bureau's policy be made clear. That policy is stated below:

"1. Bureau employees shall not serve on boards of directors, hold an office or be engaged in any capacity in any firm or organization that has a contract with the Bureau or who is a potential contractor, whether receiving remuneration or not, or in any way be affiliated with such a firm or organization. This also applies to membership on tribal councils, tribally created entities, and other Indian firms or organizations.

"2. Any Bureau employee who is presently serving in a capacity stated in No. 1 above shall sever his or her relationship immediately.

"3. Contractors or prospective contractors should be made aware of this policy when contract negotiations are undertaken or proposals are being requested and should be advised of the possible adverse effects such a relationship could have on their ability to obtain or retain a contract.

"Employees in your office immediately the foregoing policy is received from Commissioner of Indian Affairs in his memorandum dated October 25, 1972"—

So this is one of the reasons why that I am absent at the tribal council meeting today and I don't know which is for better or for worse. I simply stayed away from my council meeting today because I have a family to support. Now, by doing this I know we have strict rules on the reservation that doesn't coincide with such a memo. Now I don't know if I have a reservation to go back to.

Being that this is my sixteenth year holding an elective position, I was very concerned because many of the Bureau employees who have been assisting their tribal councils or

their reservations are those people who have some technical knowledge and the know-how, and because of the recent statement that was made by the central office that Indians should begin to start thinking about self-determination. Now I thought that this was one of the ways of motivating our Indian people to be self-determined—of course, without the elimination of Federal funds. Now, for this reason, presently I am a member of the land claims committee at home with the tribal council, that is established by the tribal council. I'm the official interpreter of the Laguna Tribal Council. In other words, many times I am the mouthpiece of the governor.

And I am also a member, board member, of the Laguna Rock Enterprise. And presently I am the vice chairman of the National Indian Education Advisory Board. I don't know if that will affect me.

And I am also the area vice chairman for National Congress of American Indians which represents the Indians on and off the reservation. And, of course, I am on the Governor's Council on Libraries for the State of New Mexico.

And as of last election— Of course, in the time past I used to be deeply involved with politics, and I thought maybe for the last time I ought to serve as election judge of the last election, which I didn't, so I have been neglecting my duties because of a piece of paper that is denying me such duties. And this is one of the things that I opposed, and I'd like to make this a matter of record that I am in opposition of such a memo.

COMMISSIONER RANKIN. It puts you in a box, doesn't it?

MR. SARRACINO. Yes, sir.

COMMISSIONER RANKIN. It certainly does.

MR. SARRACINO. It certainly does.

COMMISSIONER RANKIN. I wonder, John. Wouldn't you like to make a statement about that?

MR. POWELL. I would certainly like to consider it more. The memo to which he refers, looking at it from the standpoint of generally with Government agencies, this is a fairly standard rule that employees of Government agencies not be involved in other entities which deal with those agencies. In view of the special, unique problem of Indians, perhaps there ought to be some exception to that.

MR. BUGGS. Mr. Powell, it seems to me that some of these things— Of course I think that the General Counsel has to look into these before he can comment on them, but I think all of us know Federal officials who hold elective offices all over the country. I have friends in Maryland who serve on boards of

education. I know people in Arlington, Virginia, who serve on city councils and who are also Federal employees.

It seems to me that at least in that respect, in terms of serving on the tribal council, that this is at variance with—

MR. POWELL. I don't think this memo affects that, Mr. Buggs.

MR. BUGGS. Didn't you say the tribal council?

MR. SARRACINO. Yes.

MR. POWELL. No, no, I think the operative provision of the memo as I understand it was the impact of an entity which is dealing with the BIA. I don't think the memo—

MR. BUGGS. No, no—

COMMISSIONER MITCHELL. Tribal council.

MR. SARRACINO. The memo says tribal councils and organizations or committees.

MR. POWELL. I see. At least in that respect, then, I agree with you.

MR. SARRACINO. In fact, even having any affiliations with tribal councils or anything that has been organized by the tribal council.

MR. POWELL. That is an infringement upon your rights of association—your First Amendment rights. It seems to me that you have First Amendment rights.

But, with respect to the issue of conflict of interest, that would be something that—

MR. SARRACINO. I would even say that this is done at the Cabinet level with the Secretary of Interior. I mean there certainly is a good example of the possibility of having a conflict of interest. Right at that level. And this is only at the local level.

MR. BUGGS. I think we can look into that.

COMMISSIONER RANKIN. We can. We will look into that and include this statement in the record too.

MR. SARRACINO. Thank you, sir.

[The document referred to is in Commission files.]

MR. SARRACINO. One other thing the governor asked me to ask of the Commission is that, why isn't there an Indian on the Commission?

COMMISSIONER RANKIN. You'll have to ask the President.

MR. SARRACINO. Maybe this is the reason why maybe the President has some other plans.

[Laughter.]

COMMISSIONER RANKIN. Maybe there will be one of these days, don't you see. Anyway, you ask the President.

Mr. Ernest Lovato.

Just a second. Mr. Buggs.

MR. BUGGS. Before you call on Mr. Lovato, we were asked to have put into the record a position paper on the part of the Board of Directors of the National Tribal Chairmen's Association in connection with the affair of AIM in Washington a week or so ago. I won't read it, but with your permission it can be a part of the record.

[The document referred to is in Commission files.]

COMMISSIONER RANKIN. I might also say in passing there have been other statements filed with us for inclusion in the record that have not been read this evening.

Mr. Lovato.

TESTIMONY OF MR. ERNEST LOVATO, SECRETARY, ALL INDIAN PUEBLO COUNCIL, AND CONSULTANT TO U.S. COMMISSION ON CIVIL RIGHTS

MR. LOVATO. Thank you, Honorable Chancellor Rankin, and also the Honorable Mitchell, for coming to New Mexico and also members of the Commission's staff, the attorneys whom that I have been working with since July of this year.

It's been a great pleasure as an Indian from the State of New Mexico, as a Pueblo Indian leader and also member of the All Pueblo Council as the secretary, and also appointed to work with the Commission as a consultant to the U.S. President's Commission on Civil Rights.

I want to relay this message to the Indian people that are in the audience at this moment: That I am honored and very happy to see great number of our Indian people, from those within our State of New Mexico as well as other members of the other tribes residing in the State of New Mexico, for coming to us here and bringing forth the message and opinions from individual Indian people.

Certainly we can recall the many days, the hard days, that we have gone through, the history of New Mexico Indian people. You have proven yourself, my fellow tribesmen, ladies and gentlemen, for coming here yesterday and today, and you have certainly demonstrated the things that you are concerned and I as concern to you.

It has been a very hard work for all of us here for the last 3½ months and to this day, tonight, I am kind a little tired. I have not had a decent sleep. I have not had decent things to eat. But with all these things in mind there are times when I have gone home 4 or 5 o'clock in the morning and had only 2½ hour of rest and had to come and report to work to work with the Commission.

There are also Commission members here, attorneys, that have put in many hours to bring and make this hearing a great possible for you and I as Indian people.

In behalf of the 19 tribal governors, the All Pueblo Council leadership, I want to also relay this message to the Commission, the members of the Commission's staff, all of them, for a wonderful enjoyment that you and I have enjoyed. I have got a chance to get acquainted with each and every one of these people that I have worked with. I want you Indian people to know that the Honorable Rankin here and also the Honorable Mitchell has a great sincere in heart to you and I as Indian people, here in the State of New Mexico as well as other States of Indian affairs.

From here we hope that other Commissioners will also make a likening picture in Arizona hearing.

I have enjoyed working with these people. So, therefore, the Indian people in the audience, I hope that this will not be the end. I hope that when you go home tonight, and I hope that starting tomorrow that you will also relay this message to the young generation in your community and relay message to your Indian leaders whom they represent you of the kind of things that has taken place yesterday and today.

Many things were brought up here which I am sure that the U.S. Commission on Civil Rights will carry forth to do a great extensive followup. You will know that you will not be left behind in the dark. I am certain that the Commission on Civil Rights will do all in its power with what limited staff they have to do the things to assure you at least of some type of protection that you will not feel that of all the kinds of conferences that have taken place in the past was left behind you and no response.

I feel very confident and have a lot of faith in the Commissioners and also the staff, the attorneys, Mr. John Powell, his honesty and sincerity to the Indian people, and also I see Joe Swanson and also Mr. Newton and I can go and name all of these people.

I have got to know each and every one of them. I met with them. I sat with them. I had a coffee break with them. And we had a very good understanding.

And I'm very happy most of all to be able to get on to work with the U.S. Commission on Civil Rights with what limited time we have and with the concurrence of the chairman, our Pueblo Council, Mr. Atencio, him and I sat down with the Commissioners or Commission staff at the time in July. That

was the beginning. And they were looking forward to conduct this hearing for you to come forward to express your concern.

So beyond this, my fellow Indian people, rest assured that we, and also in All Pueblo Council leadership, as well as the Commission on Civil Rights, we will always continue to work together, but most of all remember, my Indian people, tonight that you have heard early announcement that someone in Washington is trying to relieve the Commission members.

I would encourage you people, the Indian people, whether you are Democrat or Republican, that you are now seeing the two members of the Commission here with us for the last 2 days, very honest and dedicated, and I hope that you can do something to request to retain both of them to be still on the Commission of the Civil Rights for you and I because they have come to you here. They have got the message. And I cannot see any other commissioner, regardless of President Nixon's appointment— They will be falling behind again. They will not get to know you.

These two gentlemen have gotten to know you. They have heard your message. Therefore, I encourage you people, leaders, hopefully that you will do something to request their retainment.

I certainly will also do what is best for Indian people beyond.

I would also like to compliment my wife. I know she has put up with me for the last 3½ months. I haven't had a chance to be with her much and my daughter and my other kids. So, therefore, I must compliment her. She had a great understanding for the work that I have done for you and I together.

So with this in mind I leave you with this message, my brothers and sisters of the Indian nation, Indian tribes, and the Commissioners, staff, all of you, that I am very happy that we have made this hearing a great possible for all Indian people regardless of the tribe.

Thank you so much.

[Applause.]

COMMISSIONER RANKIN. Thank you, Mr. Lovato, for these kind remarks. I am sure they are appreciated by the staff and I am sure also they are appreciated by the Commission.

And now, ladies and gentlemen, this hearing of the United States Commission on Civil Rights is drawing to an end. On behalf of all the Commission, both Commissioners and staff, I wish to express our gratitude for the complete cooperation we have received from so many officials, private citizens, and organizations in New Mexico. I want to especially thank the

many American Indian citizens and organizations that have assisted us in setting up this public hearing.

For the past 2 days this Commission has heard testimony concerning some of the civil rights problems of American Indians, especially in the areas of health services, employment, and water rights. Witnesses have expressed their dissatisfactions, their frustrations, and sometimes anger with the lack of progress being made in achieving equal opportunity in our society when it is something that they should not have to struggle for.

We have heard from various tribal leaders, private citizens, State and Federal officials that the problems associated with the delivery of adequate health services to American Indians, the provision of equal employment in private industries and public agencies, and the protection of Indian water rights are serious—so serious, in fact, as to constitute a crisis of major proportions for the American Indian if nothing is done to alleviate the underlying causes.

In addition to the facts and information gathered during the last 2 days, the testimony has consisted of opinions and comments about many of the problems that are perhaps unique to the Indian community in New Mexico.

For example, the question of health care for Indians is somewhat unique because of the special relationship that exists between the Indian and the Federal Government. Because of this, the problems generated are not really applicable to other minority groups, although they certainly relate to them. We are convinced that this uniqueness should be considered in determining policy, especially at the Federal level.

Some witnesses were frank to express their attitude and feelings toward the Federal Government. We are grateful for this testimony because the right to criticize our government is a basic principle upon which this country was built.

We believe that the testimony here and in Phoenix and in all the other areas where we plan to hold hearings will prove helpful in clarifying the issues which must be dealt with to make the American Indian a true citizen of his own land.

We also hope that this hearing will prove to be helpful in improving the communications between the American Indian and State officials.

We cannot take remedial action until all of us understand the extent and significance of the denial of equal protection of the laws and equality of opportunity for all citizens.

The issues we have been examining in such detail are complex, and time and time again the Commission has been impressed by the sincerity of the witnesses and by the caliber

of their testimony and by their almost unanimous opinion that the American Indian in New Mexico is faced with severe problems, some of which relate directly to the actions and policies of both the State government and the Federal Government.

We have heard how problems are interrelated so that they tend to exacerbate one another. We have also heard that most of these problems are due to either insensitivity on the part of State officials to the real needs of their Indian citizens or to an almost complete lack of knowledge of these problems.

We find that cultural differences do appear to be present as a barrier of sorts, but this barrier can be surmounted with a degree of understanding and sensitivity on the part of all the various population groups in this land of many cultures.

And right here I want to digress a moment not only to thank the witnesses for their testimony but this audience. You don't know how much we have appreciated your attention and your sympathy and your great interest joining in with us in discussing and hearing these problems and working toward some solution.

I have been a participant in hearings all over the United States, and I think this is about the first time I have ever issued this compliment, but it's justly deserved here this evening for the last 2 days.

Now, during these 2 days, public attention has been focused on the issues concerning the delivery and provision of health services to American Indians living in New Mexico, the employment of Indians in both the private sector and public sector in Albuquerque and New Mexico, and the special problem of Indian water rights. We have also looked into specific companies in Albuquerque and various State agencies regarding equal employment opportunities for American Indians.

Our conclusion is that both the private sector and the public sector need to recognize the serious problems that Indians have in terms of employment—not only must these problems be recognized but the appropriate offices should take affirmative action to rectify them.

This Commission will formulate specific recommendations for achieving solutions to these problems. As you know, we make recommendations to Congress and the President. We will meet, we will consider our recommendations, we will study them, and then we will make them to Congress. And every now and then, believe it or not, they take our recommendations.

Members of this Commission not present at this hearing are Reverend Theodore M. Hesburgh, Stephen Horn, Frankie Freeman, and Manuel Ruiz.

As this hearing closes, I wish to again point out that wit-

nesses at Commission hearings are protected by the provision of Title 18, U. S. Code, section 1505, which makes it a crime to threaten, intimidate, or injure witnesses on account of their attendance at Government proceedings.

I might also say that the proceedings of this hearing will be published, and if any of you should desire the proceedings, you can give your name to the Civil Rights Commission. Now, you are going to have to be prepared to wait about 6 months to a year to get a copy of the hearing because if you know how fast the Government Printing Office operates you will understand why I am putting in this warning.

But, anyway, if you should desire the hearing, the minutes of the last 2 days, please leave your name with the Commission, and one of these days, one of these months, one of these times I think you will get the hearings.

In closing, I would like to reflect on Commissioner Mitchell's statement made earlier in this hearing. Indians have a right to be recognized, a right to make a living, and not just in government. They have waited over 100 years. American Indians should be eligible to work everywhere, able to work everywhere, and to be an equal partner in our democracy.

I sincerely hope that this hearing has shown and demonstrated the interdependence that we all have upon each other. We need to work together if we are to promote real social progress for all races and all ethnic groups.

Ladies and gentlemen, this hearing of the United States Commission on Civil Rights is now adjourned, and I thank you all very much indeed.

Thank you.

[Applause.]

[Whereupon, at 8:17 p.m., the hearing was adjourned.]

21662

COMMISSION ON CIVIL RIGHTS**ARIZONA AND NEW MEXICO****Notice of Hearing**

Notice is hereby given, pursuant to the provisions of the Civil Rights Act of 1957, 71 Stat. 634, as amended, that a public hearing of the U.S. Commission on Civil Rights will commence on November 14, 1972, and that executive sessions, if appropriate, will be convened on November 14, 1972, to be held at the Albuquerque Convention Center, 401 Second Street NW., Albuquerque, NM; and on November 17, 1972, at the Phoenix Indian High School, 45 East Midway, Phoenix, AZ. The purpose of this hearing is to collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, or national origin regarding the living conditions, the educational opportunities, the employment opportunities, the opportunities for adequate health services, the administration of justice, and the protection and preservation of water resources as they affect American Indians residing in the States of Arizona and New Mexico; to appraise the laws and policies of the Federal Government with respect to denials of equal protection of the laws under the Constitution because of race, color, religion, or national origin as they affect the educational opportunities, the employment opportunities, the health care opportunities, the administration of justice, and the protection and preservation of water resources as it affects American Indians in the above areas, and to disseminate information with respect to denials of equal protection of the laws because of race, color, religion, or national origin in the fields of employment, education, health care, the administration of justice, and the preservation and protection of tribal water rights and related areas.

Dated at Washington, D.C., October 6, 1972.

THEODORE M. HESBURGH,
Chairman.

SHOULD THE CRIMINAL JUSTICE SYSTEM BE DIFFERENT FOR INDIANS?

By
WENDELL CHINO, PRESIDENT, MESCALERO APACHE TRIBE
PRESENTED TO

INDIAN CIVIL RIGHTS HEARING
ALBUQUERQUE, NEW MEXICO
NOVEMBER 14-15, 1972

Exhibit No. 2—Continued

SHOULD THE CRIMINAL JUSTICE SYSTEM BE DIFFERENT FOR INDIANS?

By
Wendell Chino, President, Mescalero Apache Tribe

In many parts of the Indian country, the Indian citizenry is not a part of the political sub-division of the states. There are several reasons for this situation as it exists today. Briefly they are as follows: (1) The constitution of the United States provides the legislative branch and the executive branch of the Federal Government with a broad authorization for the exercise of power over Indian Tribes. (2) The "guardian-ward" theory of Federal-Indian relationship provides for exclusive jurisdiction over Indian affairs. (3) The Federal Government, as owner of the land on which the Indians live, has promulgated what laws shall and shall not apply to Indians living on the reservations.

Many Indian communities are separate and exist under their Tribal form of government. Their degree and ratio of progress and development varies from one community to another. This Indian self-government is derived from the inherent powers of the Indian tribes.

In addition to the self-rule exercised by the Indian people as a part of their inherent powers of residual sovereignty - the United States Congress, by legislation which is known as the Indian Reorganization Act or the Wheeler-Howard Act, the Act of June 18, 1934 (48 Stat. 984, as amended, 25 U.S.C. 461, et seq.) provided the authority for the establishment of Indian Tribal Courts.

These Indian Tribal Courts usually have three judges and are authorized to handle all misdemeanors that are not covered by Federal law or that come under the preview of the Federal law higher courts. The jurisdiction of the Indian Tribal Courts are limited to all cases arising within the exterior boundaries of the Indian Reservations.

The Court of Indian Offenses as used by some Indian Tribes usually involves an Indian Tribe that elected not to function under the provisions of the Wheeler-Howard Act. These courts operate under the rules and regulations promulgated by the Secretary of Interior and the Bureau of Indian Affairs has the primary responsibility to see that the courts operate within the Secretarial guidelines. The authority for the Court of Indian Offenses is covered in Title 25, Code of Federal Regulations, Sections 11:1 through 11:306.

Exhibit No. 2—Continued

The Traditional Indian Courts as employed by some Tribes had their beginning from time immemorial and the Tribes' recognition of the pre-existing power to govern themselves. These Traditional Courts based on the unwritten codes of the Tribes have served their people well. The structure and nature of the Traditional Indian Courts may be based on the social and religious traditions of the concerned Tribes. Again, these courts are also limited in jurisdiction to the Indian community or reservations they serve.

The Indian Tribes by the use of Indian Tribal Courts, the Court of Indian Offenses or the Traditional Indian Courts have demonstrated their ability to adopt and adapt themselves to the court system that the Tribal customs and practices including the Tribal autonomy demanded. Based on these experiences of the Indian people in the various court systems, justice and fair play are not foreign to them.

Public Law 90-284, 90th Congress, H.R. 2516, April 11, 1968 or Title II of that Act commonly known as the Indian Civil Rights Act to some extent has infringed on these ages-old practices of the Indian people. The Indian Civil Rights Act, Title II, Section 202, (6) provides for the appearance of professional attorneys in Indian Tribal Courts, if one is retained by the defendant. Title II, Section 202, (10) provides for a trial by a six man jury if requested by the defendant. The intent of the Indian Civil Rights Act was to preserve individual Indian rights and while we agree with the intent of this law, it should also be recognized that it has started to weaken and erode the traditional and Indian judicial system. The Indian Civil Rights Act should be amended by the Congress, with the stipulation that the intent of this law was to protect Indian rights in Indian Courts. Besides weakening the Indian Court systems, it has also placed additional burdens on financially depressed Indian Tribes to assume the additional costs of providing jury expenses.

The use of professional attorneys in Indian Courts also removed the basic element and ingredient of all Indian jurisprudence when professional attorneys are pitted against Indian judges. While the Indian judges are well schooled in the ways of their people, they do not have the legal training to compete with professional attorneys in court. The use of professional against a sub-professional in Indian court immediately removes any appearance of justice which the Indian Civil Rights Act is intended to achieve.

Exhibit No. 2—Continued

When Indian Courts try their own people - the right to be tried by your peers is preserved (as advocated by the non-Indian Courts) and this is not possible under the Indian Civil Rights Law due to the use of professional attorneys and should the Indian defendant choose to challenge the decision of his Tribal or Indian Court, and when he appeals his case to a district court. Another burden placed on Indian Tribes is the defense of their cases before the United States District Court. Here again, Indian people must use their meager funds to employ legal counsel to protect or defend their action in District Courts.

From the standpoint of the Indian people, we find it extremely difficult to support the development of an alien court system. The Indian judges who staff the Tribal and Traditional Courts know their own people with a keen insight into the social, traditional, spiritual, and cultural practices and behavior of their own people. Based on this understanding they can dispense justice. The Indian people need a court system that takes into consideration their value system, which is quite different from the non-Indian value system. The Indian also lives under a unwritten code of ethics that is totally different from that of the dominant society. Therefore the Indian Civil Rights Act needs another look and study by the Congress.

The use of his Indian Court system assists the Indian judge to approach and deal with his people, often drawing from the deep wells of his own value systems and traditions to help his people to regain their pride, their honor, and to restore him to a useful citizen in his own Indian community. The American Jurisprudence, like education, economics, etc., must be learned by the Indian people before they can appropriate the use of non-Indian criminal justice system. It appears this has not been taken into account plus the fact that it took many, many years to develop and refine it.

The communal living pattern of Indian people also demand that they be given the right to determine their own type of system, a system that best fits the needs of their community and people.

Many people are concerned about the "due process" of law - I contend that the Indian people also practice "due process" in their own way and as long as this is true, they should be allowed to have a criminal system that is different.

Exhibit No. 2—Continued

The right to have a system that is different does not preclude the Indian Judge and the Indian Court from calling upon his "correctional team" whether it be the Medicine Man, the Elders of the Tribe, or the Council - should they also decide to deviate and call upon the assistance of the non-Indian professional correctional team - they can choose to do this, as long as the knowledge of their own people is kept in its proper perspective and dictates the use of these people in the judicial system.

To subject any people prematurely to any kind of system that is alien to their own way of life - in this case a judicial system - would be doing them a grave injustice and a great disservice. Should the criminal justice system be different for Indians? Yes!

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Exhibit No. 3

REPORT

Orientation to new and established medical officers
assigned to Pueblo Indian Reservation areas

on

TRADITIONAL PUEBLO HEALTH BELIEFS AND BEHAVIOR

Submitted to Dr. Donald E. Bedingfeld
Service Unit Director
Albuquerque Indian Health Hospital

by

Adelina Defender
Training Instructor
Southern Pueblos Agency
Division of Community Services
Bureau of Indian Affairs

Exhibit No. 3—Continued

July 11, 1972, 7:00 p.m.

My core presentation

Dr. Bedingfield, members of the Indian Public Health Service, Bernalillo County Medical Health Center medical staff, Pueblo Governors, members of the Advisory Board and guests:

My appreciation to all of you for your appearance here this evening to perhaps learn from one another through exchange of ideas in our efforts to promote an effective relationship between you, the physician and your Puebloan clientele.

My name is Adelina Defender, I am a Tanoan, from Jemez Pueblo, which is located approximately 50 miles northwest of Albuquerque. I have been asked to briefly tell you about my background, however, I feel that each one of us will be meeting each other during the next few months and it will be at that time our background of life will be shared.

This orientation has been conceived with two main purposes:

1. To present information about the Puebloan-speaking group of people whom you as physicians serve as providers of health care and treatment that may be useful to medical and its related field.
2. Secondly, to effect a better climate or relationship between you and your patients, since a great deal of your time will be involved with the Pueblo people.

This evening we shall see a few simple but highly important generalizations about medicine and culture and the interrelations between them. It is hoped that this orientation will result in a fruitful application of either techniques or application of attitudes that can continue to be viewed constructively.

Exhibit No. 3—Continued

2

Since your entrance to the medical field of health care and treatment here in the southwest, you have by now experienced a great deal of opportunity to observe Puebloan patients at times behave in ways that you felt thoroughly puzzling. For example:

A mother who obviously loves her child waits until the child is critically ill and almost beyond help before seeking medical aid; or

A patient seriously ill say with TB leaves a hospital against medical advice to attend a feast or an important societal function in the Puebloan internal social organizational structure or;

An individual dying of leukemia taken from the hospital and placed under the care of a shaman, medicine man or a lay practitioner.

These and similar examples of behavior that might be listed readily are perhaps difficult for professional people as yourselves to understand because they derive in part from somewhat different notions about the meanings and relative values of health, education, welfare, family relationship, time, work and personal and responsibility from those general shared by persons who have received professional training.

(Reference to Flip Chart for emphasis to audience)

CULTURAL DIFFERENCE

These differences, to the extent that they represent something more than idiosyncratic variations, are manifestations of a condition in and by a cultural group that includes among its beliefs, practices and patterns of relationship -- many that are DIFFERENT from those of the dominate natively English-speaking population of the United States.

As an aside, the focal points of describing the factors of cultural differences of the pueblo I want to mention that I have found only one form of reference (I was referring to a contribution by Frances Densmore on The Use of Music in the Treatment of the Sick By American Indian in the Annual Report of the Smithsonian Institute, Publication 4111, 1953) concerning a publication on the subject describing and analyzing particular conditions and problems given much consideration to the factors of cultural difference in its relation to medicine and the physician. Perhaps many of you have come across some beneficial publications or annual reports published by the U. S. Government Printing Service or hearings conducted by the various senate committees, but these are not concrete nor applicable to me as far as remedying the gap of effecting understanding between the physician and his Indian patient. The most penetrating studies of the culture of Puebloan-speaking people in the Southwest have remain unpublished -- mainly in the form of doctoral dissertations or have been issued in such limited editions that copies are hard to obtain.

Or moreover, they have been written mainly from the viewpoint of the specialist in one of the social sciences and are not always so organized as to be of maximum value to a practicing professional person with a limited background in the field.

(Reference to Flip Chart again for mental absorption by audience)

So some of the purposes then is to call your attention to:

That:

1. The Puebloan-speaking people here in the Southwest share a distinctive culture which to some extent varies from individual to individual

Exhibit No. 3—Continued

4

and from situation to situation; and this exercises a determining influence on their behavior.

That:

2. Medicine is a part of culture. In its totality, medicine consists of a vast complex of knowledge, beliefs, techniques, roles, norms, values, ideologies, attitudes, customs, rituals and symbols that interlock to form a mutually reinforcing and supporting system. And such a system is designated by the term "INSTITUTION"

Again, the related purpose is to provide you with information about their/our culture and its historical antecedents to enable you the professional provider to have some insights into factors that may underlie some of their behavior. This orientation is not intended to constitute a complete account of the culture of the Tiwa, Tewa, Keresan and the Towa speaking people, but rather as an introduction to that culture which will sensitize you, the professional, to some of its implications and to stimulate you to see the more comprehensive sources that are available. (Told about handout listing of reading material at this point of presentation)

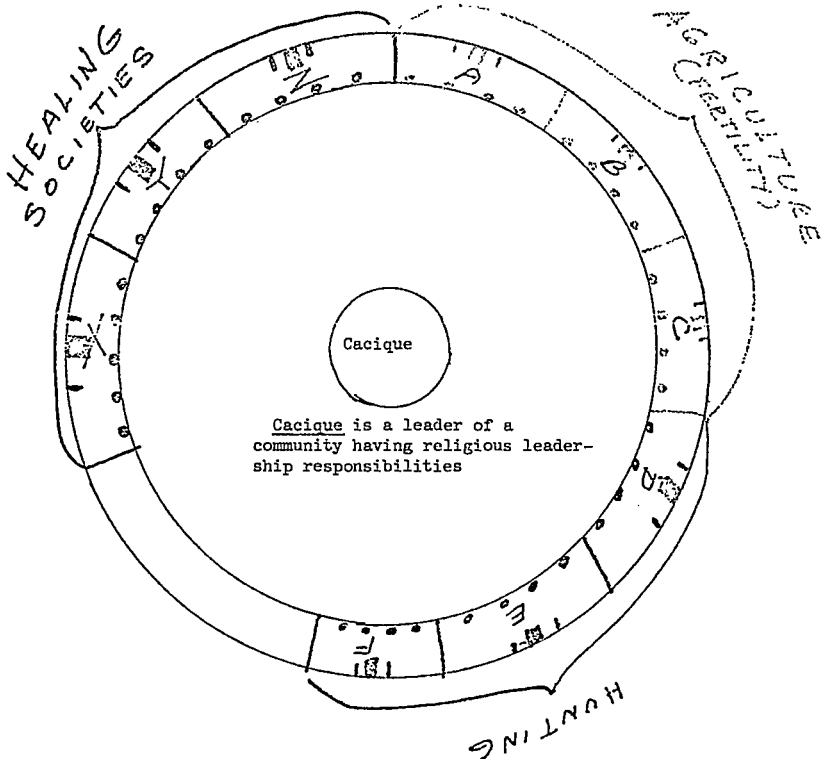
Now let me emphasize on the second point mentioned earlier of which this orientation has been conceived.

(Reference to Flip Chart of a structure which is provided in this report)

Exhibit No. 3—Continued

5

MODEL OF A SOCIETAL THEOCRATIC STRUCTURE
 IN MINIATURE USUALLY FOUND IN A PUEBLO TRADITIONAL INDIAN
 COMMUNITY



This model exemplifies societies (a multitude of societies within the puebloan internal social organizational structure, however, I am generalizing three societies for this orientation due to its complexity).

As a general rule the Pueblo world has a strong inclination when illness results that requires specialized attention be it a medicine man, a shaman or a trainee that is first consulted regarding the illness. Next the immediate family is consulted, then to the extended family before going or getting to the attention of the non-Indian medical service provider.

Here is a model in a form of a ring with a center. The center representing the theocratic leadership in the cacique. The word CACIQUE is a Spanish word brought in from the West Indies meaning a leader. It's a Spanish word not an Indian word. The cacique is leader of a community having religious leadership responsibilities and usually is given to societies within the theocratic structure.

Indians resort to home remedies. Indians resort to, very much, to what the lay people in the general society do. When a person has a headache, he doesn't immediately go to a doctor, he goes over to the medicine box and pulls out a bottle of aspirin and if that doesn't work they resort to other internal administration agents like Alka Selzer. Alka Selzer itself is a very popular health medicine among the Puebloan, as well as, aspirins. Please keep in mind herbal medicines having prime importance within the Puebloan societies.

Societies

1. Societies within the nucleus structure of a traditional Pueblo are given healing responsibilities. Societies X,Y,Z constitute healing medicine societies given to specialization in chronic illness because ordinarily the clients do not go to the elaborate healing structure unless something is serious, therefore, Societies X, Y, Z will be prime contacts for treatment of the illness.

This model provides room for other components, for example, just briefly the other components might have to do with agriculture.

2. Societies ABC might be given to agriculture which results in fertility of the earth, since we are talking about religion or theocracy. Agriculture has played an important part in the history of Pueblo Indian people, one of the primary reasons given is that Mother Earth has contributed and still contributing herbal medicines to mankind.

3. Societies DEF components might be given to hunting, therefore, all these societies are very important components within the overall construction of the Indian communal welfare. Detailed information on social organization structures in relation to medicine can be found on studies of Elsie Clews Parsons and Fred Eggan which are included on the reading material which will be handed out to you at the conclusion of this presentation.

In conclusion:

The practice of medicine involves the application of elements of the institution of medicine in /on culture to the people of another culture within the same cultural group i.e. what is done or attempted by those in the healing roles may not be fully understood or correctly evaluated by those in the patient roles.

Conversely, the response of those on the patient side of the interaction may not conform to the expectations of those on the healing side.

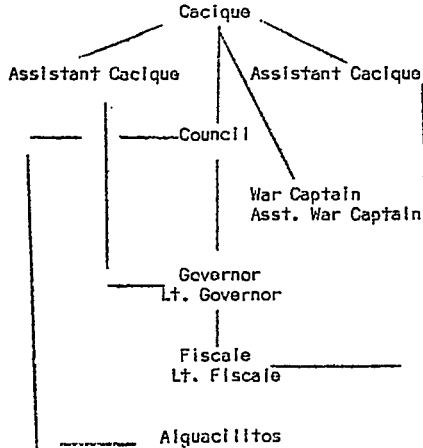
When persons of widely dissimilar cultural orientation are brought together in a therapeutic relationship, the probability of a mutually satisfactory outcome may be increased if those in the healing roles know something of their own culture and that of the patient and are aware of the extent to which behavior on both sides of the relationship is influenced by cultural factors.

An even higher probability of satisfaction may result if the professional people are willing and able to modify elements from their medicine so as to make them fit the expectation of the laymen with whom you are working.

I thank you for your interest and patience. I will now turn this orientation to Dr. Bedingfeld.

Exhibit No. 3—Continued

PUEBLO SOCIETY

Government:

The government or political organization of the pueblo is a very important factor since it influences the lives of all the pueblo residents.

The government of most of the pueblos has no written laws or a constitution. Day to day problems are solved by the council and its officers by means of innumerable regulations comprising a body of unwritten common laws.

Cacique: The cacique is the secular and religious leader of the pueblo. He attains his office through succession. He is selected from the medicine society, and holds his office for life, unless he becomes physically and/or mentally incompetent.

The Cacique's Assistants: The assistants help the cacique with almost all of his religious duties and with some of his secular duties. For example, during the selection of pueblo officers, the cacique appoints the war captain and his lieutenant. One of his assistants appoints the governor and his lieutenant, and the other assistant appoints the fiscale and his lieutenant.

Installation and Selection of Pueblo Officers: The ceremonies of selecting and installing of pueblo officers extend for almost a week. On the night of December 26th, the incumbent officers meet with the cacique and review for him all that was accomplished during their administration. Toward the end of their meeting they inform the cacique that they have done their best for the pueblo, but that they now wish to be replaced. The cacique thanks them and informs them that he will consider their request. On the night of December 29th the adult males of the pueblo meet either in the Turquoise community house or in the Pumpkin community house. When all have assembled the war captain, the governor, and their respective lieutenants talk to the men. Their talk is a review of the past year's accomplishments.

Exhibit No. 3—Continued

-2-

After the four officers have finished speaking, all four leave the community house and go to where the cacique and his assistants have been waiting. They have been waiting at one of the main religious houses since early in the evening talking about their appointments and praying that they have made the right appointments. When the cacique enters the community house, the meeting is immediately turned over to him. He starts the meeting by making a short speech concerning the significance of the session. He concludes his talk by naming the war captain and his lieutenant. At this time the appointed stand up and give a small acceptance talk. Very seldom is there a refusal to the appointment. After the war captain and the lieutenant have accepted the position, the cacique's assistants go on to name the four other officials. These other officials also go through a short speech of acceptance.

On January 1 each retiring officer brings his cane (the symbol of his respective office) to the church and gives it to the cacique. The cacique thanks them for all that they have done for the pueblo and then passes the cane to the new officers, advises them, and congratulates them.

On January 6 the new officers bring the canes that they received on January 1 to the church. This is the "Día de los Reyes" (The feast of the three Kings). A mass is said for the new officers during which the Catholic priest blesses the canes and gives them back to the officers at the end of the mass. The officers then go to the back of the church, kneel before the cacique, and implore his blessings.

DUTIES OF THE APPOINTED OFFICERSThe War Captain

1. It is his duty to call or reprimand the cacique if he is failing in his ceremonial duties.
2. They maintain surveillance over the head of each secret society in the pueblo.
3. They supervise or control the transfer of people from one kiva to another.
4. They announce when certain dances are to be performed.

The Governor and Lt. Governor

1. The governor and his assistant are liaisons between the pueblo and the outside world.
2. They bring to the council information that has to be dealt with by this group of men.
3. They settle major problems that develop in the pueblo. For example, fights between husbands and wives, discipline of children, or other cases which may come up. In other words, the governor and his assistant are like judges in the pueblo, but every major decision has to be made with the consent of the council.

The Fiscal and Lt. Fiscal

1. They supervise the upkeep of the church. They are responsible for keeping the church warm in winter, ventilated in the summer, and make any repairs that may have to be done to the church.
2. They supervise community work such as fence mending, ditch digging, and

Exhibit No. 3—Continued

INFORMATIVE READING MATERIAL

1. THE SOCIAL ORGANIZATION OF THE TEWA By Elsie Clews Parsons, New York The Trustees, 1920
2. SOCIAL ORGANIZATION OF THE WESTERN PUEBLOS By Fred Eggan, University of Chicago Press, 1950
3. NOTES ON CEREMONIALISM AT LAGUNA By Elsie Clews Parsons, New York The Trustees, 1920
4. NOTES ON THE DOCUMENTARY HISTORY, THE LANGUAGE AND THE CUSTOMS OF JEMEZ PUEBLO By Blanche Wurdack Harper, Albuquerque 1929, Thesis, M.A. University of New Mexico
5. THE PROBLEM OF INDIAN ADMINISTRATION, Report of a survey made at the request of Hubert Work, Secretary of the Interior and submitted to him February 21, 1928, The John Hopkins Press, 1928, Pg. 189 -345 (Health)
6. ANNUAL REPORT OF THE SMITHSONIAN INSTITUTE, Publication 4111, U.S. Gov't. Printing Office, Washington, D.C. 1953, Pg. 439-454, The Use of Music in the Treatment of the Sick by American Indians, By Frances Densmore
7. HEALING HERBS OF THE UPPER RIO GRANDE By L.S.M. Curtin, Laboratory of Anthropology, Santa Fe, New Mexico, 1947
8. AMERICAN INDIAN MEDICINE, By Virgil J. Vogel, University of Oklahoma Press, 1970
9. THE MOVEMENT FOR INDIAN ASSIMILATION 1860-1890 By Dr. Henry E. Fitz, University of Pennsylvania Press, 1963

Exhibit No. 3--Continued

July 13, 1972; 7:00 p.m.

Mrs. Josephine Waconda, Registered Nurse, Public Health Field Nurse opened this evening's orientation with a vivid description of a typical clinic day. She cited several typical scenes -- daily occurrences at a pueblo health clinic. The Indian audience seemed quite in agreement with her presentation.

Mrs. Waconda made several vital statements relative to a more effective method of communication between the physicians of the Indian Health Service of his assigned pueblo clientele. Some of her suggestions were:

- Learning to phrase a question in getting a better response. Being more specific in giving directions by using diagrams in giving descriptions -- adopt a method comprehensible to the patient and promote the method to its fullest extent, and explaining to the patient his illness in the second language (through an interpreter or pictography). This area was covered in depth via citing actual cases.
- In the area of human development Mrs. Waconda suggested physicians, as well as, nurses greet the clientele as they come into the clinic. A gesture of courtesy would be an ingredient in breaking down barriers of reticence and creating a relaxed atmosphere. Greetings directed to a client might be "What village are you from?", "Geez, that's a beautiful bracelet, etc. ", "How are your crops coming along?"
- Mrs. Waconda mentioned that in the event a Puebloan client cannot keep his/her appointment due to a village social or societal function a physician understand. It was suggested that perhaps a physician ask if the date would be convenient for the patient, or directly ask the client if the appointed date would interfere with an upcoming village function. If so, schedule the patient with another date.

Many vital relevant statements by Mrs. Waconda were made which should have been officially tape recorded for further reference by the physicians.

Following Mrs. Waconda's presentation, a break was called to give Mrs. Chavez and myself time to decide our next presentation (role playing vs. general panel discussion). We felt that the general discussion composed of Governors, tribal council members, and other field workers would be more beneficial; therefore, the panel members composed of Governors Pat Toya of Jemez Pueblo, Domingo Trujillo of Sanida Pueblo, Timothy Analla of Laguna Pueblo, Victor Sarracino, Council member of Laguna and Tribal Operations Officer, BIA Area Office, Jose R. Toledo, currently full-time student from University of California in Health Administration and Planning and presently assigned to NorChAP (North Central New Mexico Comprehensive Health Planning Council), Mrs. Mary Waconda, R.N. CHR Director of Laguna and Mrs. Adelina Defender, Training Instructor, Southern Pueblos Agency, BIA were asked to sit up at the front of the room for this presentation.

Exhibit No. 3—Continued

This portion of the orientation was not only informative but enlightening in the light of truth and knowledge, free from prejudice. The intercommunication between the physicians in attendance and the Governors appeared to interlock toward Dr. Bedingfeld's objective of this orientation i.e. "to provide experience orientation of new and established medical officers from the Albuquerque Indian Health Clinic and BCMC in providing direct acquaintance with Puebloan thinking and feeling related to health and social conflicts with the intention of developing a more effective relationship between the client and the medical world."

Let me cite some example from notes taken:

The panel began with each Pueblo Governor expressing his personal viewpoint of the health care and treatment for his community and concluded with his contribution for an effective medical care and social relationship between his tribal members and council to the physicians there.

Emphasis was made on the Albuquerque Indian Hospital's being operated on (priorities based on) Indian health needs, with input to this hospital by the Governors and the community people. The doctors and nurses of the Albuquerque Indian hospital list the priorities and receive support from the Area Office personnel.

It was voiced by the Governors and panel members that clear and effective channels of communications be established at once between the personnel from the USPHS-Division on Indian Health and the Albuquerque Indian Hospital for better medical treatment and planning for our Pueblo people.

They strongly felt this is an Indian hospital and should be operated with much Indian contribution as we knew the rooting of our health needs and problems. Mr. Sarracino and the Governors elaborated on broken contractual agreements that resulted at BCMC and emphatically stated this not be repeated at the Albuquerque Indian Hospital.

Governor Toya stood up from his chair and strongly commented, "We have learned in the past (about medical care and treatment provided to Indians). Things are changing. Are we going to play the same game? I have seen days we had serious cases (he cited incidences of two men from Jemez he had brought in at BCMC who were seriously ill)" Governor Toya stated he tried to talk to the physicians on duty at the time "But they were too busy talking policy....men waited all day without water or food. We do not want to see treatment done as in the past. You doctors keep this in mind. We need a change now!"

Mrs. Mary Waconda cited her experience about a man who was admitted at 5:00 p.m. brought in during the morning hours of the same day. Another patient could not be seen because she was not on the log for that day.

Governor Anally stated he had had some similar experiences and agreed with Governor Toya and Mrs. Waconda. Clinic service at Laguna not very good. Question was raised if these people are trainees (perhaps referring to staff at Laguna clinic)? Governor Analla stated, "Some of these things I would like to get to the bottom of. I have seen Dr. Kasuga. What kind of a policy does PHS have when doctors go out to treat human beings? Staff meetings every morning 1 hour, 1 1/2 hours long. Are those meetings necessary? People wait -- some in much pain while doctors are in staff meetings."

Exhibit No. 3—Continued

Victor Sarracino suggested some action be taken to have staff meetings at a different time.

Governor Analla stated that a governor's work is 24-hours without rest. He stated he had a radio set at his home. He asked that the doctors who are on duty advise him as to which doctor is on call. He also felt doctors left telephone off hook off the hook sometimes and cannot be reached. He added that Grants Hospital has violations -- some of the contract hospitals have Indians waiting. He wanted to know who controlled BCMC. What kinds of contracts the Indians had with PHS. He challenged the doctors that they will have time to see if they could handle the job or not. He said, "I could let you go if you cannot handle the job." Governor Analla stated that Laguna's objective was to bring the doctors to the Laguna Council. He added, "I am not getting after you. We would like to get your cooperation." He proudly stated that there are now more Indian people who are in the field of health and found it gratifying, and that they will be of benefit to our Indian people.

Governor Toya stated, "We are standing on new hospital. I like to see where Indians will have prior rights. I don't want this hospital to turn out like another BC. I, as Governor interpreted (reference made to the beginning of the Bernalillo County Indian Hospital planning). You are to understand clearly that we are Indians. I was afraid at that time (meaning the hospital Bernalillo County Indian Hospital was going to be taken away from Indian control). One guy's word is not strong. After one or two years they will be patting us on the shoulders. After 10 years they won't know us. They will take the hospital away from you. Let us look at the generation that is to come after us. We should build a strong foundation. I am sure the Government is tired of us asking for money. Why do they have to take our country away. That is how they get rich. They should be sent back where they came from, but we are here together today. Doctors should go along with our understanding. I don't want the hospital to get away from us.

Governor Analla stated people tell him "why don't you go and find out for yourself (reference made to mal-treatment and long hours of waiting at BCMC)."

Victor Sarracino questioned the physicians about draft dodging and if they are here to give bandages. Questioned, "what will happen when the draft ends?"

Dr. Noble expressed emphatically that some of them came here because they wanted to come, so they are labelled draft dodgers? Dr. Noble stated, "Doctors will not dry up and disappear when the war stops. They are here to make a contribution. They are licensed. Some are still in training."

Governor Trujillo stood up added, "I am a newly-elected Governor of Sandia. It is my first experience. We are on the job 24-hours per day. What I am trying to tell you is that Sandia is situated 24 miles from here. I think we are going to get along pretty good. I served in the Army, World War II, I had a family, yet I had to go. I was SCS. Indian draft dodger? Have you ever heard of one? I have nothing to do with draft dodgers. I fought for my country. I was shot at and it was not nice. An Indian prayed with all his heart. Our culture was talked about. I was in school at Santa Fe (Indian school) Pat Toya knows that. Our hair was cut and pants put on us. Today I have to learn to grow my hair again and take my clothes off.

Discussion to length was exchanged at this point between the physicians and the panel members on this issue (draft dodging and its relation to USPHS-Indian Health Service)

Exhibit No. 3--Continued

Dr. Noble stated, "Alot came here by choice. If they are giving poor services they would like to hear it from you, not from Dr. Bedingfeld and not from Dr. Kasuga."

Governor Analla responded, "We are only voicing what the people say and think. This is not the first time I am in this position. We tell our people what Dr. Kasuga tells us, but the people will not accept this."

Dr. Bedingfeld and Víctor Sarracino brought up possible solutions regarding effective physician-patient relationship.

In conclusion, Mr. Jose R. Toledo was asked to evaluate the two-evening orientation. His evaluation was so inspiring that ended the orientation with enthusiastic handshaking and embraces among the audience in the Standing Room Only dining room.

*Exhibit No. 3—Continued*ITINERARYJuly 15, Field Trip To Jemez Pueblo

8:30 a.m.

All physicians and guides meet at the Albuquerque Indian Hospital.

First Stop -- Coronado Monument. Visit in the museum then proceed to reconstructed kiva where Mrs. Defender will briefly explain symbolisms and purpose of kivas in the pueblos.

Second Stop -- San Ysidro for refreshments at the trading post.

Third Stop -- Jemez Pueblo. Follow Florence to Governor Pat Toya's home where vehicles will be parked as we tour the village proper on foot. Back to our vehicles and proceed to San Diego Mission to observe exquisite woodcarvings of the church by Mr. John Shamon of Jemez Pueblo. Then proceed to Jemez Pueblo clinic.

Fourth Stop-- Home of Mr. Jose R. Toledo's mother to pick up Mr. Toledo who will take us on a tour explaining the migration of the Jemez/Pecos people, making several stops including the Giusewa ("pre-historic pueblo the Jemez people).

At the completion of the tour, we will return to Mrs. Toledo home and enjoy delicious Puebloan food. After the treat you may return back to your homes.

Exhibit No. 3—Continued

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
PUBLIC HEALTH SERVICE
HEALTH SERVICES AND MENTAL HEALTH ADMINISTRATION

June 30, 1972

PHS INDIAN HOSPITAL
801 VASSAR DRIVE, N. E.
ALBUQUERQUE, NEW MEXICO 87108

MIMI WORKSHOP

PRESENTED BY: Albuquerque Service Unit Advisory Board Members; Public Health Education with the cooperation of Division of Community Services Southern Pueblos Agency, BIA.

PURPOSE: To have a better understanding of the Indian way of life in the communities.

WHO: New field doctors coming into the Indian Health Service and other health personnel.

WHEN: July 11, and 13, 1972; 7:00 p.m. to 9:00 p.m.

WHERE: Public Health Indian Hospital, dining room, 801 Vassar, N.E.

AGENDA

Orientation to Medical Officers Assigned to Pueblo and Navajo Indian Reservation Areas in Health Care and Treatment.

Tuesday, July 11, 1972

7:00 p.m. to 7:30 p.m.

Welcome and overview of orientation by Dr. Donald Bedingfeld, M.D., Clinical Director, PHS Hospital.

7:30 p.m. to 8:00 p.m.

Contemporary pueblo life style and slide presentation by Florence Chavez, PHS Health Educator.

8:00 p.m. to 8:15 p.m.

Break

8:15 p.m. to 8:30 p.m.

Internal Pueblo Social Organizational Structure (conflicts and barriers derived in relation to health care and treatment plus attitudes towards hospitals and doctors) by Adelina Defende: BIA.

8:30 p.m. to 9:00 p.m.

Discussion on Presentation and input by ASU Indian Advisory Board Members.

Thursday, July 13, 1972

7:00 p.m. to 7:30 p.m.

A typical clinic day by Josephine Waconda, R.N., Public Health Field Nurse.

Exhibit No. 3—Continued

Page 2

7:30 p.m. to 8:15 p.m.

Role Playing. Participants will be selected fr. Advisory Board Members, field doctors, and tribal leaders.

8:15 p.m. to 8:30 p.m.

Break

8:30 p.m. to 9:00 p.m.

General Discussion. Panel composed of tribal governors.

Exhibit No. 4

HEARINGS

conducted by
U.S. Commission on Civil Rights

November 14, 15, 1972
Albuquerque Convention Center
Albuquerque, New Mexico

U.S.P.H.S. -- Division of Indian Health Witness: Jose R. Toledo,
Comprehensive Health
Planner & Administrator

MEDICAL PRACTICE AS IT EXISTS FOR THE INDIAN PEOPLE NATIONWIDE INCLUDING
ALASKA AND THE ATTITUDE OF THE RECIPIENTS TOWARDS MEDICAL SERVICES THAT
ARE RENDERED BY THE PURVEYORS.

I AM GOING TO KEEP THE WHOLE INDIAN POPULATION IN MIND. I'M NOT JUST GOING TO TALK ABOUT THE PUEBLO AREA, IT'S TOO NARROW. I'M GOING TO TALK ABOUT MEDICAL HEALTH EXPERIENCE RELATED TO MY WORK DEALING WITH PEOPLE AND HOW TO MAKE IT SO THAT IT'S BROAD IN SPECTRUM. IT'S A HARD JOB AND HOW TO SAY IT WITHOUT LOPSIDED EFFECT WITHOUT BEING TOO MUCH FOR THE WHITEMAN; WITHOUT BEING TOO MUCH FOR THE INDIAN. BUT POINTING SPECIFICALLY AT THE QUALITY OF SERVICES THAT IS UP TO THIS POINT RENDERED AND I ALWAYS LIKE TO INCLUDE A LITTLE BIT OF THE HISTORICAL BACKGROUND OF BOTH.

UP TO THIS POINT I FEEL VERY HONORED THAT I AM BEING SUBPENAED TO TALK ON BEHALF OF THE INDIAN POPULATION AND ON BEHALF OF THE PROVIDERS IN THE LIGHT OF MY OWN PERSONAL EXPERIENCE. I'M NOT REPRESENTING ANY OFFICIAL GROUP, I'M NOT REPRESENTING INDIAN AUTHORITIES, I'M NOT REPRESENTING PHS AUTHORITIES, I'M ONLY SPEAKING AS A PERSON WHO HAS BEEN EXPOSED TO ATTITUDES AND WAYS OF THE PEOPLE.

MEDICAL PRACTICE IS VERY IMPORTANT. IT LOOKS TOWARD RECOVERY FROM MISERY IT LOOKS TOWARDS RECOVERY FROM SUFFERING AND THERE IS A VAST

DIFFERENCE BETWEEN MODES OF PRACTICE. ON ONE HAND THERE IS THE SCIENTIFIC APPROACH TO THE ADMINISTERING OF MEDICINE PRACTICED BY MODERN DOCTORS, AND ON THE OTHER HAND THERE ARE APPROACHES USED BY DEVELOPING PEOPLE AND NO DOUBT BOTH HAVE RUN THROUGH THE SAME ROUTE. MODERN MEDICINE IS WHERE IT IS AS A RESULT OF EARLIER PRACTICES WHICH WERE CONSIDERED PRIMITIVE, AND SCIENCE DEALS WITH IMPROVEMENT. IMPROVING THE METHODOLOGY, THE EMPLOYMENT OF DRUGS, THE EMPLOYMENT OF MODERN PRACTICES, AND THE EMPLOYMENT OF SURGERY TO ALTER DISEASE. IN THE PROCESS THEY ARE EMPLOYING DRUGS -- PAIN KILLERS AND WE ARE ENJOYING AND REAPING THE BENEFITS OF PEOPLE THAT HAVE SACRIFICED THEIR LIVES SO THAT THIS COULD COME ABOUT. I THINK WITH THIS VIEW, I FEEL THAT I AM ONE WHO DESERVES TO BE LISTENED TO NO MATTER HOW ELEMENTARY MY PRESENTATION IS, NO MATTER HOW ELEMENTARY MY CONCEPTS ARE, BUT NEVERTHELESS, I AM FROM THE INDIAN STOCK.

THE ADMINISTRATORS ARE WORRIED BECAUSE THE AREAS OF COMPLAINT ARE TOO NUMEROUS AND SOMETIMES THEY ARE TOO OVERBEARING, AND THE MEDICAL PRACTITIONERS ARE INDIVIDUALS WITH DIFFERENT MOODS, WITH DIFFERENT LEARNING, WITH DIFFERENT AMBITIONS, AND THEY VIEW THE MEDICAL FIELD IN THE LIGHT OF THEIR OWN INTERESTS AND IN THE LIGHT OF THEIR EXPANSION OF THEIR INTELLECT. I AM SURE EVERY DOCTOR HAS A MIND TO IMPROVE THE LOT OF HIS OWN KNOWLEDGE AND THEREBY IMPROVE THE LOT OF THE PATIENTS HE SERVES.

NO TIME IN HISTORY HAS MEDICAL PRACTICE BEEN SO EXPANDED, HAS BEEN SO INCLUSIVE FOR THE AMERICAN INDIAN AS HAS BEEN IN THE PAST 15 YEARS AND MUCH MORE SINCE TRANSFER WAS MADE FROM THE BUREAU OF INDIAN AFFAIRS TO PUBLIC HEALTH SERVICE IN 1955. THE TEAM APPROACH TO ADMINISTER HEALTH BY THE USE OF SANITARIANS, ENVIRONMENTAL SCIENTISTS, NURSING, THE DOCTORS,

Exhibit No. 4—Continued

3

HEALTH EDUCATORS, NUTRITIONISTS, PSYCHOLOGISTS, PSYCHIATRISTS -- ALL THOSE ARE VERY IMPORTANT AND THEY WILL GO THROUGH A PERIOD OF GROWING PAINS AND IN THE PROCESS SOMETHING EVENTUALLY WILL COME THAT WILL BE IDEAL. THE GENERAL POPULATION IS ALSO CONCERNED ABOUT THE HIGH COST OF MEDICAL PRACTICE. THE GENERAL SOCIETY BELIEVES IN THE DOCTOR PARTICULARLY THE PHYSICIAN AS ONE MERITING A HIGH SOCIAL STATUS AND OFTEN TIMES THE DOCTOR LIVES IN A GLASS HOUSE. HE IS VISIBLE FROM ANY DIRECTION THAT YOU CAN VIEW HIM. AND SINCE IT IS A GLASS HOUSE IT IS SO EASY TO HURL OBSTACLES IN HIS DIRECTION. ORIGINALLY THE RELIGIOUS PERSON, BE HE A PREACHER OR PRIEST, WAS VIEWED AS SOMEONE WITH VERY HIGH STANDARDS, BUT I THINK THE DOCTOR IS TAKING PRECEDENCE NOW FROM THE GENERAL SOCIETY AND EVEN TODAY THE DOCTOR IS BEING VIEWED AS SOMEONE SPECIAL MAYBE NOT SO MUCH TODAY AS HE WAS 15 YEARS AGO. AND THE YOUNGER GENERATION IS A CRITICAL GENERATION. THEY DON'T BEAT AROUND THE BUSH TO POINT AT THE MISTAKES AND AT THE SAME TIME THEY DO NOT WANT TO ADHERE TO THE ESTABLISHED PRINCIPLES THAT HAVE BEEN INVOKED AND SOME OF THE PHYSICIANS EVEN ENDANGER THEMSELVES BY PUTTING AWAY SOME OF THE ORIGINAL PRINCIPLES OF CONDUCT -- PRINCIPLES OF GOOD MEDICAL PRACTICE EVEN TO THE POINT OF KEEPING THEMSELVES CLEAN WHEN THEY GO FROM PATIENT TO PATIENT AS THEY ADMINISTER THEIR MEDICAL PRACTICES. AND I KNOW PARTICULARLY AN INSTANCE WHERE A DOCTOR INSPITE OF MANY WARNINGS, FROM THE NURSES HAD BEEN INFECTED BY THE SICKNESSES THAT THE PATIENTS CARRIED AND THERE ARE THESE KINDS OF INFRACTIONS THAT HAVE BEEN COMMITTED BY THE PHYSICIANS IN THE INDIAN HEALTH SERVICE. I DON'T KNOW IF THAT IS GENERALLY TRUE OF PRIVATE MEDICAL PRACTICE.

NOW LET US GO TO THE HISTORICAL SETTING OF THE RECIPIENT, THE AMERICAN INDIAN. MOST GENERALLY, THE INDIAN POPULATION HAVE NOT HAD

Exhibit No. 4—Continued

4

THE APPRECIATION NOR HAVE THEY REALIZED THE SCOPE OF PROGRESS MADE BY MODERN MEDICINE OR MODERN MEDICAL PRACTICES. BUT I HAVE YET TO SEE AN INDIAN WHO IS NOT AWED BY THE IMMENSE PROGRESS THAT HAS BEEN MADE IN BRINGING ABOUT ALLEVIATION FROM ILLNESS. AS FOR EXAMPLE, THEY WILL RESORT TO MODERN MEDICAL PRACTICE. THEY WILL SEEK A DOCTOR FROM THE CAUCASIAN WORLD OR FROM A DOCTOR FROM MODERN SOCIETY. THERE ARE MANY CAPABLE DOCTORS WHO ARE NOT NECESSARILY WHITEMEN, AND THEY HAVE THE KNOW-HOW. INDIANS WILL NOT HESITATE TO GO TO HIM FOR COMPLEX SITUATIONS THAT INVOLVE LONG-TERM ILLNESS OR SERIOUS ILLNESS SUCH AS A BAD GALL BLADDER, BAD KIDNEYS, BAD LUNGS OR UPPER RESPIRATORY DISEASES THAT REQUIRE SURGERY. THEY WILL NOT HESITATE TO TAKE THAT FINAL STEP, BUT OFTENTIMES THEY WILL ARRIVE AT THOSE DECISIONS PERSONALLY WHEN THE DISEASE HAS BEEN PROLONGED AND HAS BECOME A TERMINAL CASE, AND OFTEN THE INDIAN PEOPLE BECOME DISAPPOINTED BECAUSE THE MEDICINE OR THE PRACTICE HAS FAILED IN THEIR ESTIMATION AND THEY WILL BUILD UP ANTAGONISM WITHOUT LOOKING INTO THE SITUATION ON A BROADER PERSPECTIVE. THE INDIANS ARE A PEOPLE WHO HAVE BEEN GIVEN TO THE CONFIDENCE OF THE SHAMANS, TO THE CURANDERAS AS THE SPANISH PEOPLE CALL THEM, OR THE CURANDEROS. THERE ARE SEVERAL TYPES OF HEALERS WITHIN THE INDIAN POPULATION. THERE ARE THOSE THAT PRACTICE THE ADMINISTRATION OF POLTICES--THE FEELING OF THE BODY, AND APPLYING HEAT TO THE AREAS THAT THEY FEEL ARE AFFECTED BY COLD WEATHER -- THE ELEMENTS OF NATURE--BAD WIND, SEVERE WINDS AND OFTENTIMES, MOST GENERALLY, THE PEOPLE, SINCE THEY ARE SO CLOSE TO NATURE WILL CONSIDER ILLNESS AS BEING OUT OF KILTER OR BEING OUT OF HARMONY WITH NATURE AND THE DEGREE OF THIS MISSTEP OR THE DEGREE OF DIVERGENCE IS USUALLY GAGED BY THE WAY A PERSON FEELS AND SOMETIMES PAINS CAN BE

Exhibit No. 4—Continued

5

WITHSTOOD FOR PROLONGED PERIODS OF TIME BY A PATIENT. ONLY UNTIL HE GETS TO WHERE THE PAIN IS A CONSTANT SOURCE OF IRRITATION AND IT GETS INTO THE WAY OF HIS PERFORMANCE WILL HE BEGIN TO TELL OTHERS. BUT USUALLY HE WILL BEGIN TO DIAGNOSE HIMSELF AND WILL ADMINISTER HIS OWN SELF-IMPOSED KNOWLEDGE OF WHAT, TO HIM, CONSTITUTES PRIMARY HEALTH CARE. AND AFTER CONSULTING WITH HIS IMMEDIATE FAMILY AND LATER WITH HIS EXTENDED FAMILY GROUP IT WILL BECOME A COMMUNITY CONCERN. THEN EVERYBODY TAKES ON THE ASPECTS OF THE PATIENT. EVERYBODY WANTS TO SHARE THE ILLNESS AND THEY WILL SHARE IT IN SEVERAL WAYS. EITHER BY DIRECT HELP THROUGH THE SHARING OF FEELINGS OR SEEKING AN IMMEDIATE PRACTITIONER AND LATER ON MAYBE PROBABLY ONE WHO IS INVOLVED IN CURING, EMPLOYING RELIGIOUS PRACTICES. PSYCHIATRY IS APPLIED. PSYCHIATRY AS IS KNOWN TO THE INDIAN PEOPLE--HEALING OF THE MIND, OR HEALING OF THE TOTAL BODY. AND, MOST OFTEN, IT WILL AMOUNT TO BEING OUT OF HARMONY WITH THEIR IMMEDIATE RELATIONSHIP AND THOSE THINGS ARE USUALLY TAKEN CARE OF, AND IT INVOLVES ALSO THE GOVERNMENT OF THE COMMUNITY. THOSE WHO ADMINISTER ORDER AND IT WILL BE A COMBINATION OF ADVICE, ADVICE LEADING TOWARD RIGHT LIVING, AND FINALLY IN SOME CASES HARMONY WILL BE RESTORED AND THE PATIENT WILL BE ON THE WAY TO RECOVERY. BUT THERE ARE MANY THINGS TODAY THAT PERPLEX EVEN THE BEST OF MEDICINE MEN, EVEN THE BEST OF RELIGIOUS LEADERS AND THE MORE SERIOUS AND COMPLEX CONFUSIONS RESULT FROM OUR AMALGAMATION WITH THE CAUCASIAN, OUTSIDE FORCES AND THEIR WAY OF LIVE, THEIR LIFE-STYLES, THEIR SYSTEMS OF VALUES.

GENERAL SOCIETY BELIEVES IN EDUCATION, SOMETHING TECHNICAL, IT IS USUALLY SOMETHING REMOVED FROM THE EVERYDAY EXPERIENCE OF THE INDIAN. SOMETHING THAT WILL REQUIRE MANIPULATION OF SKILLS AND OFTENTIMES WHAT WILL IMPROVE HIS ECONOMIC LOT AND WILL REQUIRE HIS GOING TO ANOTHER AREA

Exhibit No. 4—Continued

6

PERHAPS A METROPOLIS, PERHAPS MANY MILES AWAY. AND OFTENTIMES THE FAMILY WILL BE SHIFTED, THE FAMILIES BE SEPARATED AND ALL THESE CAUSE ALTERED FEELINGS. EVERYBODY WANTS TO SEEK PACE WITH MODERN SOCIETY. YOU CAN JUST TELL THAT BY GOING INTO THE INDIAN HOMES WHERE DIFFERENT VALUES ARE NOW BEING ESTABLISHED, DIFFERENT VALUES ARE BEING INTRODUCED. SOME SAY TO HAVE A TELEVISION SET IS A GESTURE OF SOME FORM OF WEALTH OR TO HAVE A MOTOR VEHICLE IS ANOTHER GESTURE OF WEALTH AND TO HAVE MODERN APPLICANCES IS ALSO ANOTHER VALUE THAT IS LOOKED UPON AS HAVING WEALTH AND TO EVEN SPEAK ANOTHER LANGUAGE THAT IS FOREIGN TO THE INDIAN SUCH AS ENGLISH, SPANISH, FRENCH OR OTHER IS CONSIDERED A LEANING TOWARDS BEING DIFFERENT. SO ALL THESE ARE PERPLEXING AND CONFUSING. CHILDREN HAVE NO TIME TO LISTEN TO THE OLDER GENERATION. AND THIS ALONE CREATES DISHARMONY. IT RESULTS IN CONFUSION AND IN BAD FEELINGS IN SOME INSTANCES. WHEREAS, ON THE OTHER HAND, THE GENERAL SOCIETY ALSO HAVE VALUES THAT THEY CANNOT COPE WITH EITHER, HIGH TAXES FOR ONE, THE EFFORT TO BELONG OR TO KEEP UP WITH THE JONESES IS ANOTHER AREA, THE GENERAL SOCIETY FEELS IS NECESSARY IN ORDER TO MEET THE APPROVAL OF PEOPLE SURROUNDING THEM. THEY ARE NOT SATISFIED WITH ONE CAR, THEY HAVE TO HAVE OTHERS. YOUNGSTERS ARE DEMANDING THINGS THAT EVEN MIDDLE-CLASS PEOPLE CANNOT AFFORD READILY FOR THEM. ALL KINDS OF FADS COME INTO PLAY. SO I DON'T THINK EITHER GROUP ARE CONTENT WITH CONDITIONS AS THEY ARE. BUT THE QUESTION NOW IS: ARE WE GRIPPING ABOUT THE QUALITY OF MEDICAL CARE? PERHAPS WE HAVE IDEAL SITUATIONS IN MIND THAT WE THINK MIGHT IMPROVE THE LOT. IF THE INDIAN PEOPLE HAVE SUCH DESIRES, ARE THEY DOING, ARE THEY COMPLAINING JUSTIFIABLY, ARE THEY DOING THINS IN A MANNER THAT WILL RESULT IN IMMEDIATE IMPROVEMENT.

Exhibit No. 4—Continued

7

I WOULD SAY NO. MOST OFTEN COMPLAINTS ARE VARIED AND COMPLAINTS ARE MADE IN SUCH A WAY THAT FEELINGS ARE HURT AND THERE IS NO BASE THAT SHOWS EVIDENCE OF SOUND PLANNING. IN MANY INSTANCES THEY MIGHT BE BASES FOR MISUNDERSTANDINGS. BUT SOMETIMES JUST INTERPRETATIONS OF MISUNDERSTANDINGS DO NOT RESULT IN IMMEDIATE SOLUTION TO HEALTH PROBLEMS.

I WOULD SAY THAT INSTEAD OF APPROACHING THE SOLUTION TO CERTAIN PROBLEMS TO CERTAIN HEALTH PROBLEMS PROBABLY AT THE ADMINISTRATIVE LEVEL OR AT THE USE OF MONEY LEVEL, USE OF MANPOWER, THE USE OF INSTITUTION, THE USE OF MEDICAL CONTRACTS, AND ALL THAT, INSTEAD OF ATTACKING INDIVIDUALS WHO ARE THERE TO GIVE SERVICE, I THINK THE WHOLE PROCESS SHOULD BE TACKLED AS GEARED TO THE SYSTEM. THE SYSTEM THAT PROVIDES ALL THIS AND LEAVE PEOPLE OUT FOR A LITTLE WHILE, BUT JUST CRITICIZE THE TOTAL SYSTEM FIRST. I THINK THAT WOULD BE ONE WAY TO DEVELOP AN IN-DEPTH INSPECTION INTO THE WHOLE SITUATION. I THINK THAT THE TOTAL HEALTH PROGRAM THAT THE INDIANS ARE NOW RECEIVING IS VERY NARROW IN SCOPE. I THINK THAT THE INDIAN SERVICE--PUBLIC HEALTH SERVICE IS NOT THE ONLY PROVIDER THAT IS AVAILABLE. I THINK THE UNITED STATES GOVERNMENT ARMED FORCES WITH ALL THEIR HUNDREDS OF TRAINED PERSONNEL, TOP-NOTCH EQUIPMENT THAT COULD BE USED READILY IS LAYING IDLE AND IS NOT BEING INCORPORATED. EVEN COUNTY, STATE FACILITIES AND ALL THEIR SERVICES ARE NOT BEING USED. THE INDIAN PEOPLE SHOULD PLAN HEALTH PROGRAMS THAT WILL INCORPORATE EVERY AVAILABLE HEALTH SERVICE WITHIN THEIR GRASP, AND MAKE FOR A MORE EFFICIENT CROSS-DELIVERY OF ADEQUATE HEALTH SERVICES. FOR NOW, IT IS STILL IN ITS PRIMITIVE STAGE FOR SO HIGH A TECHNICAL SOCIETY AS WE LIVE IN TODAY. THERE ARE AREAS WITHOUT A HOSPITAL IN OUR INDIAN TERRITORY. AND THE INDIAN PEOPLE ARE NOT THE ONLY ONES THAT ARE DEPRIVED. THERE ARE THE SPANISH-AMERICANS AND PIONEERING ANGLO FAMILIES THAT LIVE OUT IN THE

OUTSKIRTS, AS WELL AS OTHER RACES THAT HAVE NO AVAILABILITY TO IMMEDIATE HEALTH FACILITIES AND HEALTH SERVICES.

I PERSONALLY THINK THAT THE DELIVERY OF HEALTH SERVICES BY ALL AGENCIES SHOULD BE DELVED INTO AND NOT NECESSARILY SPIN OUR WHEELS WITH ONLY ONE AGENCY WHICH WE HAVE AS PROVIDERS AND THAT IS PUBLIC HEALTH SERVICE INDIAN HEALTH SERVICE.

THIS IS THE WAY I SEE IT. HEALTH EDUCATION SHOULD NOT BE LIMITED TO THE DEPARTMENT OR DISCIPLINE KNOWN TO BE RESPONSIBLE FOR THIS. I THINK HEALTH EDUCATION SHOULD RUN THROUGH THE WHOLE GAMUT OF HEALTH DELIVERY FROM THE PHYSICIAN DOWN TO THE CUSTODIAN IN THE HEALTH SERVICE.

IT IS VERY APPALLING TO BE PRESENTING PROBLEMS OR TRYING TO RECOMMEND SOLUTIONS AND IS UNBELIEVABLE THAT WE STILL AS INDIAN PEOPLE LIVE IN A DUAL-ADMINISTERED GOVERNMENT SOCIETY AND WE ARE TALKING ABOUT CIVIL RIGHTS. AND WE SEEM TO HEAR MORE PEOPLE SAY, "WELL, YOU'RE CITIZENS OF THE UNITED STATES, YOU INDIANS ARE CITIZENS JUST LIKE THE REST OF US. YOU'RE SUBJECT TO THE LAWS OF THE UNITED STATES. YOU'RE GIVING YOUR LIVES ON FOREIGN SOIL FOR THE PROTECTION OF DEMOCRACY." AND IT'S UNBELIEVABLE AS AMERICANS, TO REFLECT ON SITUATIONS TODAY WHERE WE ARE STILL TRYING TO FIGURE OUT WAYS AND ISOLATING PEOPLE OR RACES AND ISOLATING SERVICES IN A SOCIETY AND FROM A GOVERNMENT THAT SEEMS TO CONFUSE THE PEOPLE MORE THAN THEY ARE HELPING THEM BY SIMPLY NOT FOLLOWING, THROUGH, A PROCEDURE THAT CREATES OR MAKES FOR UNITY -- A UNITY OF EFFORT!

I'VE OFTEN FELT THAT HEALTH PROBLEMS CAN'T BE EXAMINED IN A VACUUM. THEY ARE RELATED TO MANY THINGS INCLUDING UNEMPLOYMENT, LACK OF VOCATIONAL SKILLS, INADEQUATE EDUCATION, CULTURAL CONFLICTS. MANY PEOPLE ARE CONTENT TO SAY, FOR EXAMPLE, THAT "ALCOHOLISM" IS A PROBLEM WITHOUT ADEQUATE

Exhibit No. 4—Continued

9

RECOGNITION THAT THIS IS A MENTAL HEALTH PROBLEM WHICH IS MANIFESTED IN OTHER WAYS IN FORMS OF SUICIDES, HOMICIDES, VANDALISM, AND OTHER DEVIANT BEHAVIOR AS WELL. MOST DOCTORS IN THE HEALTH SERVICE WOULD PROBABLY NAME ANEMIA, IRON DEFICIENCY IN WOMEN OF CHILD-BEARING AGE, OBESITY, GASTRO-INTESTINAL, AND UPPER RESPIRATORY DISEASES AND A STILL TOO-HIGH INFANT MORTALITY RATE AS A "MAJOR HEALTH PROBLEMS" ON THE RESERVATION. THIS TENDS TO OVERLOOK THE REAL PROBLEMS WHICH STEM FROM LACK OF PROPER NUTRITION AND OPPORTUNITY FOR ADEQUATE BODY GROWTH, INSUFFICIENT EDUCATIONAL PRE-NATAL CARE AND DELIVERY. THERE IS, FOR EXAMPLE, A GREAT DEAL OF SICKNESS FROM EAR INFECTIONS AND COLDS WHICH ARE CAUSED BY INADEQUATE DIETS PERHAPS. THIS DIETARY INADEQUACY AFFECTS BOTH INDIANS WHO CAN'T AFFORD BALANCE DIETS, AS WELL AS, THOSE WHO CAN BUT BECAUSE OF INADEQUATE INFORMATION DO NOT KNOW HOW TO PREPARE BALANCE DIETS.

THE INDIAN HEALTH SERVICE, STATE AND COUNTY AGENCIES, AND INDIAN GOVERNMENTS, SHOULD ENCOURAGE THE ORGANIZING OF HEALTH DISCIPLINES WITHIN THE INDIAN GROUPS AND EMPHASIZE ADEQUATE HEALTH PROGRAM PLANNING AND PROGRAMMING INSTEAD OF MERELY GIVING LIP SERVICE TO THE CONCEPT.

THE INDIAN GOVERNMENTS ARE AT FAULT ALSO IN THE FOLLOWING AREAS: THEY ARE TOO NARROW IN THEIR ADMINISTRATIVE VIEWS. THEY ARE TOO ORIENTED IN GOSSIP. I THINK SOME OF THE INDIAN ADMINISTRATORS SHOULD BE JAILED FOR KEEPING INDIANS IN UNFRUITFUL CULTURAL SHACKLES. MANY INDIAN ADMINISTRATORS ARE NOT PUT INTO OFFICE BECAUSE OF POPULARITY AMONG THEIR PEERS OR AMONG THEIR CONSTITUENTS. THEY ARE PUT THERE BECAUSE OF CLIQUES, AND SOMETIMES THEY STIFLE PROGRESS FOR THEIR OWN PEOPLE BECAUSE OF MISINFORMATION. THEY CAUSE PEOPLE TO VIOLATE RULES BECAUSE OF BAD HEALTH, BECAUSE THEY ARE SICK, AND I AM TALKING ABOUT ALCOHOLICS AND THE MENTALLY ILL. THEY CAUSE THEM TO BE JAILED AND THEY CAUSE THEM TO BE FINED HIGHLY

Exhibit No. 4—Continued

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IN ALIEN AND LOCAL COURTS. THEY OVERLOOK SCHOOL DROPOUT RATES. THEY OVERLOOK SUICIDE -- THE MOUNTING SUICIDE RATES, AND THEY DELVE IN NEPOTISM NOW THAT O.E.O. OPPORTUNITIES ARE HERE.

THE INDIAN SITUATION IS NOT ALL GOOD, AND NEITHER IS IT ALL BAD, BUT IT'S BAD ENOUGH. IT HAS CREATED JUNGLES WITHIN THEIR OWN COMMUNITIES AND MANY PEOPLE ARE NOT HAPPY.

I WANT TO WORK MORE CLOSELY WITH THE ALL INDIAN PUEBLO COUNCIL (AIPC) NOT BECAUSE I'M REALLY CRITICAL, BUT I WANT TO TELL THINGS AS THEY ARE TO BOTH THE INDIAN AND THE NON-INDIAN.

I WOULD SAY ALSO THAT THERE IS SICKNESS AMONG THE INDIAN PEOPLE, IT IS TRUE. MONEY AND TIME ARE BEING SPENT TO ALLEVIATE THIS SICKNESS CAUSED BY VIRUS AND OTHER MORE SCIENTIFICALLY-DESIGNATED AGENTS, BUT I THINK THAT THE MORE HARM-PRODUCING AGENTS, THE AGENTS THAT PRODUCE MOST HARM ARE BUREAUCRATS COMING FROM YOUR LEVEL PEER GROUP -- RIGHT THERE YOU! THE LEGISLATORS. SITTING UP THERE IN WASHINGTON. MANY PEOPLE ARE DESIGNING LAWS THAT ARE TENDING TO CONFUSE BOTH PARTIES--INDIANS AND NON-INDIANS ALIKE. FOR EXAMPLE, THERE IS A PUBLIC HEALTH ACT THAT PROHIBITS INDIAN PEOPLE WHO ARE EMPLOYED BY CIVIL SERVICE FROM PARTICIPATING DIRECTLY WITH THE INDIAN PEOPLE TO GIVE THEM SERVICE THAT THEY DESIRE SO BADLY. THIS LAW IS VERY DISCRIMINATORY! AND THERE ARE MANY LAWMAKERS IN WASHINGTON WHO ARE LISTENING TO PEOPLE AND SHOWING FAVORITISM THAT TEND TO CREATE DISHARMONY RATHER THAN HARMONY. MONEY HOUNDS AND WARMONGERS ARE EVERGETTING A READY EAR.

THE ISSUE OF MOST CONCERN TO INDIAN PEOPLE, IN TERMS OF QUALITY OF HEALTH CARE, IS ONE ABOUT PEOPLE, THE DOCTORS WHO ARE GOING TO TAMPER WITH THE PATIENTS ANATOMY IN THE PROCESS OF TREATMENT I FEEL THAT PEOPLE ARE NOT HAPPY WITH THIS ASPECT OF HEALTH SERVICES THAT THEY ARE NOT

Exhibit No. 4—Continued

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TREATED WITH DIGNITY. FOR EXAMPLE, DOCTORS IN EXAMINING PATIENTS, POKE AND CHECK AWAY WITHOUT SAYING ANYTHING TO THE PATIENT AS IF THEY, THE PATIENTS WERE COGS IN AN ASSEMBLY LINE. THERE IS, GENERALLY SPEAKING, INADEQUATE COMMUNICATION TO INDIAN PATIENTS. THIS ASPECT OF HEALTH CARE IS NEGLECTED IN FORMAL MEDICAL TRAINING. A HUMAN BECOMES TOO MUCH A SUBJECT AND NOT A PERSON AND THE MEDICAL STUDENTS AND DOCTORS SHOULD BE EDUCATED THAT A BODY HAS FEELINGS AS WELL.

IHS INTRODUCED SENSITIVITY TYPE TRAINING TO PROFESSIONAL STAFF WITHIN THE PAST THREE YEARS AND THAT MORE HAS BEEN DONE THIS YEAR THAN BEFORE. I FEEL THAT THE JOB DONE IN ALBUQUERQUE THIS YEAR WAS GOOD, ALTHOUGH, I CANNOT ASSESS WHETHER IN FACT, ATTITUDES HAVE CHANGED. AT THIS POINT, I WOULD LIKE TO RECOMMEND A REPORT BY A JEMEZ INDIAN WRITER SUBMITTED TO DR. DONALD BEDINGFELD, M.D. SERVICE UNIT DIRECTOR, ALBUQUERQUE INDIAN HOSPITAL ENTITLED "ORIENTATION TO NEW AND ESTABLISHED MEDICAL OFFICERS ASSIGNED TO PUEBLO INDIAN RESERVATION AREAS ON TRADITIONAL PUEBLO HEALTH BELIEFS AND BEHAVIOR. IT IS AN UNPUBLISHED DOCUMENT WORTH READING WRITTEN BY ADELINA DEFENDER, TRAINING INSTRUCTOR BIA SOUTHERN PUEBLOS AGENCY DIVISION OF COMMUNITY SERVICES.

SOME OF THE CULTURAL BARRIERS BETWEEN MEDICAL PEOPLE AND INDIANS, AS AN EXAMPLE, MIGHT BE POINTED OUT IS THE DEFINITION OF A MEDICAL EMERGENCY. I ONCE HEARD AN IHS DOCTOR TELL A GROUP OF INDIANS AT A MEETING THAT AN EMERGENCY IS WHEN A PERSON IS CONVULSING, IS BLUE AROUND THE MOUTH, AND IS HAVING A HARD TIME BREATHING. AN INDIAN PATIENT SAID TO THE DOCTOR, THAT, "TO US INDIANS THAT MAN IS DEAD." INDIANS WILL SAY THAT A VERY SICK WHITE MAN LOOKS LIKE A DEAD INDIAN. INDEED THERE IS NO WORD FOR MEDICAL EMERGENCY IN INDIAN TERMINOLOGY. ILLNESS IS ILLNESS AND WHEN YOU ARE UNCOMFORTABLE YOU ARE SICK! INDIANS FEEL THAT WHEN AN

Exhibit No. 4—Continued

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ILLNESS IS BEYOND THE BODY'S POWER OF SELF-HEALING IT IS SERIOUS AND TREATMENT SHOULD BE SOUGHT. AS A CONSEQUENCE OF THIS DIVERGENCE IN ATTITUDE INDIAN HEALTH SERVICE DOCTORS AND STAFF TEND TO BE UPSET WITH INDIANS WHO SEEK TREATMENT FOR WHAT IHS PEOPLE CONSIDER MINOR PROBLEMS. TO THE PATIENT, HOWEVER, THE PROBLEM IS NOT MINOR. THE INDIAN PEOPLE DO NOT LIKE HOSPITALS AND WOULD NOT GO TO ONE UNLESS THEY FEEL A PROBLEM IS SERIOUS.

I NOTED THAT THE SIOUX CALLED A HOSPITAL THE HOUSE OF DEATH AND THAT THE SIOUX WORD FOR DOCTOR IS TRANSLATED AS ONE WHO BUTCHERS. MODERN HOSPITALS PRESENT TO INDIANS UNFAMILIAR SITUATIONS AND CONCEPTS. THE ANTISEPTIC NATURE OF A HOSPITAL IS, ACCORDING TO MY CONCEPT, NOT NORMAL IN AN INDIAN EXPERIENCE. A YOUNG DOCTOR STRESSED PERSONAL HYGIENE TO INDIAN PATIENTS YET INDIANS SEE THEM (THE DOCTORS) AS SLOVENLY WITH THEIR LONG HAIR AND BEARDS AND WITHOUT AT TIMES PROFESSIONAL CLOTHES.

HEALTH DELIVERY PROBLEM AREAS FOR INDIANS ARE: THE INADEQUATE DIAGNOSIS AND UNEXPLAINED PERSCRIPTIONS TO PATIENTS, LONG WAITS AT CLINICS, LACK OF PROLONG HOSPITALIZATION, FAILURE TO UTILIZE ACCUSTOMED PRACTICE OF HEALING ARTS SUCH AS PULTICES--FEELING THE PATIENT, INADEQUATE ATTENTION TO PROPER APPLICATION OF BANDAGES, AND OTHER MEDICAL SUPPLIES, INADEQUATE HOME VISITS, NEGLECT OF THE ELDERLY BY NOT HAVING NURSING HOMES IN THE VILLAGES WHERE INVALIDS COULD CARE FOR THEMSELVES TO SOME EXTENT AND HAVE LOCAL INDIAN PERSONNEL DO THE REST. MEDICAL AND AMBULANCE ASSISTANCE CLOSER TO THE COMMUNITY. A PROBLEM WHICH AFFECT OTHER RACES LIVING IN THE AREA ALSO.

INADEQUACIES IN THE AREAS OF PRE-NATAL CARE AND EDUCATION, THOUGH THERE HAS BEEN SOME IMPROVEMENT HERE IN RECENT YEARS. EXTENTION OF DENTAL SERVICES TO COVER MORE THAN JUST SCHOOL-AGED CHILDREN.

Exhibit No. 4—Continued

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I FEEL THAT PERSONNEL SUCH AS COMMUNITY HEALTH REPRESENTATIVES, MENTAL
/ HEALTH COORDINATORS, ALCOHOLISM CONSELORS ARE NOT SUFFICIENTLY ACCOUNTABLE
TO THE PEOPLE THEY WORK TO SERVE.

Exhibit No. 5

Complaints given to CHR's

HEALTH

I. Poor Dental Services

- A. Fillings falling out.
- B. School children for tooth emergency care refused because the Dental Office was not notified in advance.
- C. We were told we had money for false teeth and orthodontic work and we took the people to the hospital. The Dentist didn't know anything about it and he was all upset.
- D. No work on school children at the present time and they haven't started working on them yet.
- E. Shots given to patients must be old as some patients got as many as ten shots.
- F. Drilling on a tooth without giving a shot.

II. Eyeglasses

- A. Glasses come back and the perscription doesn't fit the individual. Sometimes the temples are long, the lens are scratched, etc.
- B. The time the perscription is sent in and the time the glasses come in is too long.
- C. Actual working time spent in office is only four hours.
- D. He makes referrals for the Welfare patients which takes even longer to get glasses.
- E. He comes only three times a year.

III. The Hospital Staff's Attitude

- A. Doctors don't spent enough time with patients when examining them.
- B. Sometimes the doctors don't get the right kind of orientation and it causes problems with the local people and the administrative staff.
- C. The doctors don't like to call other hospitals about patients who are there when the people ask them to make the call.
- D. The doctors seem to have the attitude that the people are qualified to take care of their sick babies and sick people at home. They don't have the facilities like a hospital to take care of their people at home and for this reason the pediatric ward is empty most of the time.
- E. Poor ambulance service.
- F. When telephoning the hospital, it takes them a long time to answer.
- G. At the present time we do not have a Public Health Field Nurse.
- H. The pharmacist makes no effort to identify the patients before he gives out medicines. There was a mix up of medication where a child's medicine was given to a baby. A 12 year old girl and a baby.

Exhibit No. 5—Continued

IV. Contracts

- A. The U. S. P. H. S. makes contracts at the area level without consulting the local area and usually the contracts are in Albuquerque which makes it difficult for them to provide quality services to the local area.

V. Patient, Doctor, and Nurse Communications

- A. They discuss the patient as if she wasn't present. Instead of using some act of persuasion they jump to conclusion and tell them they can't make them stay in the hospital so the patient just leaves.
- B. Communications need great improvement between the patients and local service unit.

VI. Elective Conditions

- A. There are no funds for elective conditions like for gall bladders, tonsils, eyeglasses for adults, orthodontic work.

A STUDY OF THE PATTERNS OF RELATING BETWEEN
THE DELIVERERS OF HEALTH CARE SERVICES AND
THE CONSUMERS OF HEALTH CARE SERVICES IN
THE INDIAN COMMUNITY

Research Study
Indian Health Service
U.S.P.H.

JANICE KEKAHBAH, R.N., M.A.
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CHAPTER I

INTRODUCTION

Rationale for the Study

This study was designed to determine whether the relationships between the Indian Health Professional and the Indian community is one which provides optimum satisfaction for both professional and client. In recent years, there has been a drive for community involvement in the National health care system. Efforts toward community involvement has been particularly strong in Indian Health Service. This new input into the health care systems demand both intrapsychic and interpersonal change on the part of both professional and client. Anxiety and resistance to change are innate in all people. This study will help identify and elucidate some specific aspects which contribute to resistance and anxiety of the individuals within the Indian Health Care System as a result of the input.

At least three major areas which contribute to malfunction of the Indian Health Care System can identified for more indepth study and problem solving. Broadly stated, these are (1) the mismatch of values existing between professional and client arising from divergent cultures; (2) reluctance on the part of the health professional to "give up" traditionally defined tasks and functions arising from professional socialization; and (3) unwillingness on the part of the

Indian community to assume responsibility for community control, due to years of paternalistic infantilization under the Bureau of Indian Affairs.

It is an inescapable fact that the professional and client are both products of some culture within our society. Cultural conditioning effects the individual's manner of relating. The divergence between the culture of the professional and that of the client would most likely be wide when the client is American Indian and the professional is White Middle Class American.¹ There are four possible patterns of relating within a cross-cultural system. They are: (1) the client relinquish his own values and take on those of the professional;² (2) the professional relinquish his own values and take on those of the client; (3) both professional and client maintain their own values in a rigid manner which blocks communication and successful interpersonal relationships; and (4) the client and professional both recognize and discuss the value incongruencies, so that each person learns something from the other.³ In order to achieve the optimum pattern of relating, both the client and the professional must be oriented to each other's culture and must attempt to understand each other's culture.

¹Frances E. Levine, An Exploratory Study of the Accuracy of the Bureau of Indian Affairs as a Representative of the American Indian: Unpublished Master's Thesis; Rutgers University; New Brunswick, New Jersey, 1971., p. 3.

²Over four hundred years of trial and error has proven that the "melting pot" theory is ineffective when applied to the American Indian.

³Levine, op. cit., p. 3.

The professional socialization of health professionals, especially physicians and nurses, is one of rigidity of roles and rigidity of boundary maintenance. Therefore, the relinquishing of tasks and functions to members of the Indian community is particularly difficult for these professionals. This difficulty seems to be present even when the individual professional is intellectually aware of the necessity for delegating functions. In order to decrease the anxiety and resistance involved in such a role change, the individual professional must be helped to recognize and to accept his own tendency toward rigidity.

For many years, the Indian people have been treated in a paternalistic manner by the Federal Government.⁴ For the most part, Indian people were not given choices as to the direction of their own communities in matters of Government, health and general welfare. In those instances when choices were given, tribal decisions were reversed by the Government, if the decision was not in agreement with that of the administration.⁵ After many years of a dependent relationship, the Indian people lack the skills and know-how of independent functioning. As it is with individual growth toward independence and ultimately interdependence, so it is with communities. Communities, as well as individuals must be allowed room for growth which entails both the privilege and responsibility of decision making. Such growth

⁴Edgar S. Cahn, ed., Our Brother's Keeper: The Indian in White American (Washington, D.C.: New Community Press, 1969), pp. 5-12.

⁵Tom Cook, History of St. Regis Reservation (Unpublished Manuscript: Richmond College; Staten Island, New York, 1970).

entails learning, including trial and error, with both positive and negative feedback. It is the responsibility of the professionals to provide the information necessary for decision making,⁶ and not to make the decisions for the People.

Need for and Purpose of the Study

Many health problems among the Indian people exceed those among the general population. For example, the suicide rate among Indian adolescents is a ratio of three to one, as compared to the national average. Also, the statistics of 1967, show that the Infant Death rate remains 1.4 times as high as the U. S. All Races rate and the Indian life expectancy is 64.0 years as compared to 70.0 for the U. S. as a whole.⁷ Although the quality and quantity of health care given Indians has steadily improved, especially since 1955, the Indian population continues to have a poor health status as compared to the general population.

Since optimum delivery of health services requires involvement of the Indian community, there is a need to assess the working relationship which exists between the health professionals and the community. Furthermore, assessment of each sub-system's response to the new input of community involvement into the system is needed. This is important in order to identify and elucidate some aspects

⁶Without adequate information true choices are impossible: The decision maker is being "set up" for failure when asked to make a decision without adequate information.

⁷Department of Health, Education and Welfare, The Indian Health Program of the U.S. Public Health Service (Washington, D.C., U. S. Printing Office, Publication No. 1636, 1969), p. 21.

which contribute to the resistance and anxiety brought about by change--community involvement within the Indian health system.

Problem Statement

The problem statement for this study is: Does the Indian health system provide the opportunity for optimum satisfaction of the deliverers of health care services and for optimum satisfaction of the consumers of health care services in the process of giving and receiving of health care?

Sub-Problems

1. What is the extent of satisfaction for the deliverers of health care services based on their own perceptions?
2. What is the extent of satisfaction for the consumers of health care services based on their own perceptions?
3. How are the value incongruencies that exist in a traditional cultural system dealt with?
4. To what extent are the health professionals delegating responsibilities of health care to members of the Indian community and what is the reaction of the professional?
5. To what extent are the Indian communities accepting responsibility of community control and decision-making?

Definition of Terms

For the purpose of this study, the following definitions will be used:

Deliverer of health care services: An individual who is directly involved in promoting health, preventing or curing disease. This study will specifically include nurses and their aides and

Exhibit No. 6—Continued

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physicians and their aides.⁸ This individual will be working in the out-patient or emergency room departments in an Indian health facility.⁹

Consumer of health care services: An individual who is an American Indian and who utilizes the out-patient or emergency departments provided by Indian Health Service. Consumer, client and patient will be used interchangeably for this study.

Optimum satisfaction of deliverer: The deliverer of health care thinks and feels that he has the opportunities to practice his profession to the best of his abilities, i.e., he is not constricted by the existing facilities or equipment, heirarchical structure or community control.

Optimum satisfaction of consumer: The consumer thinks that he has available to him through Indian Health Service the scientific knowledge and skills to promote, maintain or regain physical health with no threat to self-esteem or to community cohesiveness.

Assumptions

For this study the researchers assumed the following:

1. That individuals can, with a greater or lesser amount of assistance, describe their own thoughts and feelings concerning their own satisfaction within the health care system.
2. The information obtained from the interviews was

⁸The researchers recognize that other professions are involved in the delivery of health care. However, the scope of this study does not allow for the inclusion of all professions involved.

⁹Primary and/or contracted facilities.

Exhibit No. 6—Continued

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sufficiently accurate to ascertain some specific areas of satisfaction and dissatisfaction which exists within and/or between each subsystem in the Indian health care system.

3. The sample for the major research study includes a large variety of Indian communities¹⁰ and therefore, generalizations to the total population of Indian communities can be drawn.

Limitations

1. The sample study only includes two professions involved in the delivery of health care, and therefore, generalizations to other professions are limited.

2. The sample for the pilot study was a convenience sample and therefore, generalizations to the total Indian health system are limited.

Summary

The introductory chapter included the following: (1) the rationale, (2) the need and purpose, (3) the problem statement, (4) the subproblems, (5) the definition of terms, (6) the assumptions, and (7) the limitations for the study. Literature relevant to the study will be reviewed in Chapter II.

¹⁰The term "community" here includes both consumer and deliverer of health care services.

CHAPTER II

REVIEW OF THE LITERATURE

Introduction

A review of the literature was conducted to investigate the selected factors in the patterns of relating between the deliverers and consumers of health care services in the Indian community. No studies were located that dealt with patterns of relating between deliverers and consumers in Indian Health Care services or consumer involvement within the Indian communities. The only literature that is available concerning the Indian Health System and health within the Indian communities focuses on how deliverers of health care view and interpret Indian Health standards, Indian beliefs concerning health care, traditional Indian medicine, and "the Indian" in general. Some of these articles gave good descriptive accounts of the Indians' reactions to health programs and procedures but there is a paucity of literature which lends any understanding of the most basic human relationship within the health system--between the deliverer of health care and the consumer of health care. It is possible that this lack is due to the professional's reluctance to look at themselves but tend always to look toward the recipient as the source of problems. In this respect, Sol Levine states:

...in relative terms, too much effort has been focused upon the health care recipient in general and the problems of the lower-class public health recipient in particular, while too little analytic attention has been paid to the professional

Exhibit No. 6—Continued

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public health personnel and public health organizations... it seems to us that in the field of public health a general stance prevails which implies that there is something "wrong" or that there is some "shortcoming" with the target population, and that the public health professional will make some concessions for a period of time in the hope that, ultimately the public health recipient will somehow "mature", become more knowledgeable, and will pursue a mode of behavior consistent with public health prescriptions.¹

To study the relationship between deliverer and consumer in Indian Health Service, the researchers will investigate the literature in the following areas: (1) Community involvement, and (2) Cross-cultural relationships in health care.

The following references were checked from 1969-1971: (a) Psychological Abstracts, (b) Dissertation Abstracts, (c) Sociological Abstracts, (d) American Journal of Public Health and (e) Public Health Reports.

Community Involvement

Recently there has been a growing demand for community involvement along with a demand for quality care. Galihier states that as the consumer receives more formal education and becomes more aware of what should be expected from health professionals the consumers become more discriminating in their ability to actually judge the type of health care they are or are not receiving. In this regard, Galihier states:

A multitude of factors are responsible for the rapidly emerging prominence of consumers in the health care system--higher educational levels of the general population, greater

¹Sol Levine, Norman A. Scotch, and George Vlasak, "Unraveling Technology and Culture in Public Health," American Journal of Public Health, LIX, No. 2 (1969), p. 238.

Exhibit No. 6—Continued

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expectations derived from improved communication, a somewhat higher standard of living (or expectation of a higher level of living), and frustrations which develop when the demand and ability to purchase health services do not equal the ability of the system to supply services and frequently not the quality of services desired.²

Added to these factors, in the Indian community, there is the growing realization that the Federal Government is legally obligated (via treaty) to provide health care to Indian people, and, the Indians' claim to health care is not based on charity or welfare.

Most of the writers are in agreement that in order to improve any health care system consumer participation is necessary. ³⁻⁸ According to the literature reviewed, the reasons that consumer participation acts to improve a health care system are numerous. One of these reasons focused on the target population. As J. Campbell states:

One rationale for (consumer participation) was based upon the educational theory that people who participate in

²Claudia B. Galiher, Jack Needleman, and Anne Rolfe, "Consumer Participation," HSMHA Health Reports, LXXXVI, No. 2 (1971), p. 99.

³Levine, op. cit.

⁴Galiher, op. cit.

⁵John Campbell, "Working Relationships Between Providers and Consumers in a Neighborhood Health Center," American Journal of Public Health, LXI, No. 1 (1971), p. 97.

⁶Steven Jonas, "A Theoretical Approach to the Question of 'Community Control' of Health Services Facilities," American Journal of Public Health, LXI, No. 5 (1971), p. 917.

⁷Trude Lash, "Community Attitudes: Medical and Community Partnership," New York State Journal of Medicine, (September 1968), p. 2294.

⁸Charles S. Levy, "Community Involvement and Responsibility," New York State Journal of Medicine, (September 1968), p. 2297.

identifying a problem and thinking through a proposed solution would be more committed to carry out that solution, less resistant to change, and have increased opportunities for learning.⁹

Consumer involvement, then, results in consumer education and learning and therefore stimulates further and more sustained consumer involvement. This new entrance of input into the health care system can also result in education and learning on the part of the deliverer. Consumer input provides the deliverer with an opportunity to learn the needs of the community he is to be serving and thereby enables him to make his contributions relevant to the community. Galiher states that "... the health professional needs the consumer to achieve a relevant and responsive health care system". Galiher gives as an alternative to consumer participation a health care system which "... can become excessively self-serving and, in fact, tangential to even fundamental community problems."¹¹ One cannot expect, however, by simply bringing the deliverer and consumer together that learning and growth on both their parts will automatically and spontaneously occur. The education, training, and professional socialization of health professionals does nothing in assisting them to participate in a health care system which also includes consumer input. Therefore, in order that consumer participation become a viable part of a health care system some attention must be given to special programs for the training of professionals to

⁹ Campbell, op. cit., p. 97.

¹⁰ Galiher, op. cit., p. 99.

¹¹ Ibid., p. 100.

Exhibit No. 6—Continued

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assist them in assuming a positive role. In this regard, Galicher quotes Parker, an author of a report on training consumers in policy making roles, as stating that professionals "... have as much, if not more, need for training as the low-income consumer representative."¹²

There is, however, more to the establishment of consumer participation than education. A consumer-provider relationship has previously been established that calls for consumer non-participation. In order that this old pattern of relating be reversed and a new pattern of interdependence established, psychosocial and political aspects must be considered. Campbell aptly speaks to these other aspects. He states that:

Consumer-provider relationships have political and psychosocial as well as educational dimensions. This is evidenced by efforts to gain or maintain power, mutual distrust, and lack of understanding of how to work together effectively.¹³

Campbell does believe that growth and learning by both consumer and deliverer can be obtained through continued efforts at inter-relating and sustained involvement. Difficulties which may be encountered during the transitional period must be recognized and anticipated so that they can be dealt with effectively thus hastening the shift from consumer non-participation to consumer involvement. The culture of the professional can be a major hinderance to consumer involvement. Levine points at this phenomena as an underlying cause of some of the difficulties

¹²Ibid., p. 105.

¹³Campbell, op. cit., p. 102

Exhibit No. 6—Continued

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encountered in bringing about consumer participation. He states:

As a general working hypothesis, we wish to propose that there are numerous instances when the culture and the practices of health professionals, as well as the needs, characteristics, and operations of health organizations constitute major impediments to the improvement of public health.¹⁴

Some of the culture and practices of health professionals which constitute major impediments to the improvement of health care are as follows: (1) Professionals "tend to perceive, define, and approach problems in terms of how they can best use their own skills, and not necessarily in terms of how the given problems could be solved."¹⁵ This is definitely an obstacle to involving the consumer in health care at either the planning or operational levels; (2) Programs run by medical doctors tend to be based on the medical model and therefore, disregard other (psychosocial) approaches to health problems; (3) Galihier reports that it is felt that "medical professionals, unnecessarily asserted the sanctity of the medical profession."¹⁶ This indicates a reluctance to give up the status which physicians enjoy in the area of disease and physical medicine and which has been carried over into other areas of health and matters of everyday living. Following the same principle, Lash reports that: "The requirements for participation by the community has met with caustic comments by some that the sick will now tell physicians how to cure them."¹⁷

¹⁴Levine, op. cit., p. 238

¹⁵Ibid., p. 239.

¹⁶Galihier, op. cit., p. 105

¹⁷Lash, op. cit., p. 2296.

Other difficulties which may arise has to do with the past experiences of the consumers in their dealings with the establishment in general and the health care system in particular. Lash states that: "... the poor have no experience in partnership experiences but do have much experiences in receiving promises that are not kept. Exorbitant and unrealistic demands for control must be expected."¹⁸ This problematic area may make itself known in actual demands for control or in the manner that control is exercised. However, the deliverer must be cautious in judging what might appear to him to be 'exorbitant and unrealistic demands for control'. It may be that the deliverer is observing acts of consumer self-determination but, relative to previous consumer behavior of deference and passivity, it appears to the deliverer that the consumer is now over-demanding.

One of the most vital aspects of any system is the mechanism of continuous feedback between sub-systems without which the system becomes dysfunctional. As previously stated for a health care system to be relevant, it must have input from the consumers. This input should come in on various levels. According to Campbell, these levels should include policy, planning and operational levels.¹⁹ There also must be a continuous feedback mechanism between the consumer set on the planning level and the consumer set on the operational level. In order that community involvement become effective, mechanisms for input and mutual feedback must be established. These mechanisms must be clearly

¹⁸Ibid.

¹⁹Campbell, op. cit., p. 103.

and specifically defined to both consumer and deliverer. The unique roles and responsibilities of both the consumer and deliverer must be spelled out in order that each group can know what is expected of them and what they can expect from each other.²⁰

Most of the writers discussed community involvement or community control as it effects and is effected by the consumer and the deliverer, and the relationship which exists between the consumer and the deliverer. References were made to the larger social system of which the health care system is a part only when it was necessary to explain set behavior patterns. Steven Jonas, however, gave a good analysis of community control in its broad social context. Using E. Richard Weinerman's principles, Jonas outlines where the control of health services really lies:

... The building blocks of health services institution are its capital structure, its expense budget, and the quantity and quality of its staff; another was that the building blocks of a health services system are its organization, its financing, and its patterns of practice; and finally, that control of the building blocks was what conveyed control of the institution on the system.²¹

Jonas also points out that control of these building blocks--capital budget, expense budget and supply of personnel--is not in the hands of the administrators. In the United States control of the building blocks lies with the State and with those to whom the State is "most responsive--industrial leaders, bankers, heads of major universities and foundations and the like".²² Unless the State becomes respon-

²⁰Galiner, op. cit., p. 106.

²¹Jonas, op. cit., p. 917.

²²Ibid.

sive to the needs of the consumers of health care services, the consumers can make only minor improvements. In the Indian Health Service, the building blocks are controlled by the Secretary of the Department of Health, Education, and Welfare, the United States Congress, and the President of the United States. These groups and individuals have been charged with the moral and legal (through treaty agreement) responsibility of providing health care services for the American Indian. Each year for the past two years, the President has included in his State of the Union Messages strong statements advocating Indian self-determination. In response to the policy of self-determination, the administrators of IHS have begun programs leading toward "community control" as a part of the IHS. However, to quote Jonas again:

Real control of a health services institution lies with the controllers of the building blocks, not with the day-to-day administrators. 'Community Control' (as discussed previously in this chapter), focuses not on the building blocks but on the day-to-day administration, keying on such matters as hiring and firing of staff. This, however, is not 'community control'...²³

Neither is it true self-determination. At best this type of community involvement, without some control over the building blocks, can only bring relatively minor improvements and give only the illusion of 'community control' and Indian self-determination.

From a more positive standpoint, both Jonas and Lash see that a continued and sustained working together of the community and institution of deliverer and consumer will eventually bring about true com-

²³Ibid.

munity control. In this regard, Jonas states that:

When the interaction between community and institution is carried on in an atmosphere of mutual cooperation and understanding, certain improvements in medical care can result. Such involvement can provide community people with an excellent understanding of where the power really does lie, and can provide professional staff the opportunity to work with and become friendly with the people whom they will have to ally if productive struggles are to be waged.²⁴

Also speaking to the notion that to have consumers and deliverers working together at the community level will eventually lead to their working together to gain some control over the building blocks, Lash states:

Once people in the communities feel involved and have the sense that these services are theirs, I believe they will fight hard for whatever is needed to improve the services, whether the needs are for more Federal funds, better facilities, more training funds, or more facilities for the medical profession.²⁵

Both Jonas and Lash agree that the ultimate goal of community involvement should be an alliance between community and institution in gaining some realistic amount of control over the building blocks—'capital structure, expense budget, and supply of staff'.

Cross-Cultural Relationships in Health Care

The literature was reviewed for the cross-cultural aspects involved in the Indian Health care system. Nothing was written concerning those unique aspects of the professional's culture which might tend

²⁴Ibid., p. 920.

²⁵Lash, op. cit., p. 2297.

Exhibit No. 6—Continued

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to make him resistant to the delivery of health care within the Indian Health system. The majority of the writers focused on a few of the more obvious areas of Indian behavior that are different from the majority culture and how these differences should be dealt with in the delivery of health care. Crockett writes that "most Apaches do not keep close track of time"²⁶ and that in prescribing medicine, the physician should describe the time of day the medicine should be taken. Crockett also reveals that:

As among many Indian groups, the Apaches consider themselves healthy until acute illness forces them to seek medical attention. Many Apaches have difficulty in describing their symptoms...²⁷

Crockett also discussed: How the Indian views health as being in harmony with nature; traditional Indian medicine and its importance to the community; and, how Medicine Men can be used in the delivery of health care.²⁸

Charles Archibald gave an account of the American Indian beginning with the Bering Strait theory to Huxley's Brave New World. He gave a good description of the Indians' resistance to assimilation by the majority culture.²⁹

²⁶David C. Crockett, "Medicine Among the American Indians," HSMIA Health Reports, XXCVI, No. 5 (1971), p. 403.

²⁷Ibid.

²⁸Ibid.

²⁹Charles W. Archibald, "The Mainstream Where Indians Drown," HSMIA Health Reports, XXCVI, No. 6 (1971), pp. 489-494.

Exhibit No. 6—Continued

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Fuller Torrey discusses: the traditional shaman and traditional beliefs; how the non-Indian professional should modify etiological concepts to correspond with known "facts"; and, utilization of the shaman in the delivery of health services.³⁰

There were some writers who looked toward the effects of the majority culture upon the consumer to ascertain the areas of resistance on the part of the consumer. Littman in his discussion about the Indian Health system paraphrased Robert Leon in stating, "When people express agreement with plans imposed on them by paternalistic government agencies, they are bound to resist and sabotage these plans in a passive-aggressive manner."³¹ Littman further ascribes Indian social problems of alcoholism, unemployment, truancy from schools, abandoned children, and juvenile delinquency to the fact that "... representatives of Western culture have ignored the needs and aspirations of American Indians, particularly in the area of education and employment. Consciously or unconsciously, we have tried to alienate Indians from their own culture, from their own people and from their own traditions".³² Bob Mito also looks at the majority culture in order to isolate some of the underlying causes for minority resistance in receiving health care. Mito states:

The rejection experienced by a socially isolated group leads to counter-rejection by the offended which further isolates

³⁰Fuller E. Torrey, "Mental Health Services for American Indians and Eskimos," Community Mental Health Journal, VI. No. 6 (June 1970), pp. 455-463.

³¹Gerard Littman, "Alcoholism, Illness, and Social Pathology Among American Indians in Transition," American Journal of Public Health, LX No. 9 (1970), p. 1776.

³²Ibid.

Exhibit No. 6—Continued

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the victim. As Knutson stated, 'If members of a minority group expect to be rejected, to be given inferior treatment, or to be regarded as socially inferior, they are not likely to seek or accept services offered.³³

Mito also quotes Moellman in giving a general direction to health professionals in working within a cross-cultural system. Mito quoting Moellman states that "... professionals in health must understand man's culture, perceptions, environment and particular relationships to them; above all, it is essential to maintain the notion of the basic dignity and worth of man."³⁴ This is a very admirable but general prescription. The difficulty lies not so much in agreeing upon philosophy but in the application of ideal types to practice.

The researcher's review of the literature revealed nothing concerning the professional's culture which might tend to make him resistant to the delivery of health care in the Indian Health system. Fran Levine, in preparation for her Master's Thesis, did an extensive review of the literature regarding similarities and differences between psychotherapist and client. Although specific to the therapeutic encounter, much of what Levine has written is applicable to any relationship involving health professional and consumer in a cross-cultural setting. Levine discusses directly the effects that the professional's culture has on his ability to function in a culture not his own. In this regard, Levine states:

The majority of psychotherapists are persons who have been socialized in the Protestant ethic of middle to upper

³³Bob Mito and Sata S. Lindbergh, "The Dilemma of Urban Indian Health," P.H.S. Study Grant- AM05250 (Unpublished), p. 12.

³⁴Ibid.

Exhibit No. 6—Continued

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socio-economic status. This culture, having its own value systems, biases, and life styles, requires the therapist to find ways to transcend and overcome his experiences and thereby relate to a different culture and values. If the therapist does not make a meaningful attempt to do this, he is limited in his ability to understand another way of life.³⁵

Levine cites studies which indicates that value congruence determine, at least in part, treatment of choice, judgement of progress and "the patient being 'popular' with the therapist". The writer cites other studies which indicates that therapists' attitudes and emotions are related to race and social class (among others): and, that "what is called 'transference problems' may really be the therapist's attitude and behavior toward the patient."³⁶ Levine also discussed a theoretical paper by Block in which Block stated that before the therapist judges the behavior of a client as being inappropriate, he should be sure that the patient is not realistically responding to some deprecatory attitude on the part of the therapist.³⁷ Health professionals must be aware of the role their own culturization has played in forming their attitudes and patterns of relating. Levine's emphasis was on cross-cultural psychotherapy in general. However, her discussion is also applicable to the delivery of health care by medical personnel within the Indian communities.

Conclusion

It was concluded from the above discussion that in order to

³⁵Frances E. Levine, An Exploratory Study of the Accuracy of the Bureau of Indian Affairs as a Representative of the American Indian, p. 10.

³⁶Ibid.

³⁷Ibid.

study the extent to which Indian Health Service provides the opportunity for optimum satisfaction of the deliverers and consumers in the giving and receiving of health care, it would be necessary to study community involvement* and the cross-cultural aspects existant in the deliverer consumer relationship. Specifically:

The extent of satisfaction within both deliverer and consumer groups would be expected to below in those areas over which neither group have control. Presently, neither the consumer nor the deliverer have any control over- "The building blocks of a (the Indian) health services institution (which) are its capital structures, its expense budget, and the quantity and quality of its staff: another ... (is) the building blocks of a (the Indian) health services system (which) are its organization, its financing and its patterns of practice."³⁸

It would also be expected that the extent of deliverer satisfaction will be greater than the consumer's in those areas over which the deliverer is in control of health care with no consumer input.

Indian consumer would be expected to begin making more demands for involvement, to become more critical of inferior services as the educational level and expectation for quality care increases.

It would be expected that for community involvement to be optimumly effective, the administrators must provide mechanisms for consumer input on the planning, policy, and operational level. There

*Looking at both the deliverer and consumer.

³⁸Jonas, op. cit., p. 917.

Exhibit No. 6—Continued

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must be mechanisms for mutual feedback between the consumer set on the operational level and the consumer set on the planning and policy levels. It would further be expected that unless there is mutual feedback between all sub-systems the total system will be dysfunctional.

Struggles for power and control can be expected until the deliverer and consumer learn to relate on a partnership basis.

In areas in which health services do become adequate, it would be expected that the consumer would originally preceive these services as if they were inadequate. As Mito states, the consumer who has come to expect rejection by the deliverer, inferior health care, and inferior treatment will not readily accept health services offered.

It would be expected that some health professionals will have difficulty recognizing and dealing with the value system, biases and life style of their own culture as they collide with the consumer's (Indian) culture. These professionals will be limited in their ability to function effectively. Limitations exist in the areas of diagnosis, choice of treatment, and the ability of the professional to adequately judge the meaning of behavior on the part of the consumer.

Summary

In the review of the literature, community involvement was discussed first. Community involvement was discussed from both the stand point of the day-to-day administration of health institution and systems and also in its broad social context. Then cross-cultural aspects within the health care system was presented. Lastly, a discussion on the extent of satisfaction expected within the deliverer and consumer groups was presented.

CHAPTER III

METHODOLOGY

Introduction

The following chapter presents the methodology used to determine the extent to which the Indian Health system provides the opportunity for optimum satisfaction of the deliverers and consumers of health services in the process of giving and receiving health care. The chapter is divided into the following sections: (1) pilot study; (2) research study, comprised of (a) study setting and sample population, (b) data collection, (c) data analysis; and, (3) summary.

Pilot Study

Prior to carrying out the major investigation, a pilot study was conducted to pre-test the questionnaires, to determine the length of time needed for interviewing subjects, to check clarity of questions and to refine the approach of interviewing techniques for both sample populations.¹

Pilot Questionnaire:

The researchers and a research consultant² reviewed the question-

¹See Appendix A for the complete report given to Indian Health Service at the end of the Pilot Study.

²Shirley Smoyak, Ph.D.: Professor in Psychiatric Nursing and Research Methodology at Rutgers University, New Brunswick, New Jersey.

Exhibit No. 6—Continued

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naire³ and data obtained for rewording of questionnaire items in order to obtain optimum information, to clarify questions, and to add or delete questions as indicated by responses of subjects. A code was devised to be used by a panel of judges in coding the responses to the questionnaire items of Section III of the deliverer questionnaire—"How are the value incongruencies in a cross-cultural system dealt with?"⁴

Pilot Sample

The sample population for the study included six deliverers and seventeen consumers of health care services in the clinic at the Claremore Indian Health Service Hospital, Oklahoma. The sample of deliverers⁵ was made up of one registered nurse, two licensed practical nurses and three medical doctors. S_d included male and female in the age range of 27 years to 50 years. S_c included both male and female in the age range of 19 to 69 years.

Analysis of Pilot Data

The data was analyzed by the researchers who looked for (1) areas of match or mismatch between the (a) consumer and deliverer; (b) Indian and non-Indian deliverers; (2) problematic areas of common concern; and (3) problematic areas not previously considered.

The researchers utilized a research consultant to re-evaluate the research design, to refine the research tool, and to discuss collection and analysis of final data.

³See Appendix B.

⁴See Appendix C.

⁵Deliverer sample is indicated by S_d and Consumer sample by S_c.

Research StudyDescription of Questionnaire

The researchers devised two questionnaires based upon the results of the above pilot study.⁶ Questionnaire D₂ was to be used as a guide for interviewing subjects in the deliverer sample population. Questionnaire C₂ was to be used as a guide for interviewing subjects in the consumer sample population. Questionnaire D₂ consisted of the following:

(1) Background Information.⁷

(2) Seven general and seventeen specific questions testing for subjective satisfaction of the deliverers of health care services with their work within Indian Health Service.

(3) Ten general and eleven specific questions testing for how the value incongruencies are being dealt with.

(4) Seven general and twenty-seven specific questions testing the extent to which health care professionals are delegating responsibilities of health care to members of the Indian community.

(5) Three general and three specific questions testing the extent to which Indian communities are accepting responsibility of community control and decision-making.

Questionnaire C₂ consisted of the following:

⁶See Appendix D.

⁷One question for non-career medical officers was included in the background information--"What stops you from making a career of Indian Health Service?". The question was asked here instead of under Part II in order to lessen the possibility of imparting researcher bias to the subject.

Exhibit No. 6—Continued

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(1) Background Information.

(2) Nine general and twenty-seven specific questions testing for subjective satisfaction of the consumer of health care services.

(3) Eleven general and nine specific questions testing for how the value incongruencies are being dealt with.

(4) Seven general and thirteen specific questions testing the extent to which the health professionals are delegating responsibilities of health care to members of the Indian community.

(5) Five questions testing the extent to which the Indian communities are accepting responsibilities of community control and decision making.

Study Setting and Sample Population

This investigation was conducted in the Albuquerque Area of Indian Health Service. The originally chosen study setting was changed at the suggestion of the Albuquerque Area Indian Advisory Board. The researchers, a member of the Albuquerque Area Office, and the Albuquerque Area Indian Advisory Board chose the following study setting:

1. one Navajo community
2. one Apache community
3. one Southern Pueblo
4. two Northern Pueblos⁸

⁸ Due to the enlarging of the sample population time did not allow for investigation into one of the two Northern Pueblos.

Exhibit No. 6—Continued

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5. U.S.P.H. Albuquerque Indian Hospital
6. U.S.P.H. Santa Fe Indian Hospital
7. Bernalillo County Medical Center- Contracted Care Facility

The two samples (deliverer and consumer) were as follows:

(1) All the physicians and their assistants and all the nurses and their assistants in the clinics and outpatient departments in the above described setting. One exception being the contracted facility where a table of random numbers was used to obtain a random sample of medical and nursing personnel in the clinics, outpatient departments and emergency room. ~~The total sample~~ population for Indian Health facilities included nine Medical Doctors, four Registered Nurses, six Public Health Nurses, eight Licensed Practical Nurses, and two Nurse Aides.

From the random list of ten deliverers at the contracted hospital, the following was obtained: two Medical Doctors, two Registered Nurses and one Technician. One Licensed Practical Nurse and one Medical Student refused to participate in the investigation; three other deliverers were unobtainable due to vacation and termination.

(2) Consumers were obtained from each of the four communities, ten consumers from the urban Indian Population⁹ and ten at the contracted facility. A total consumer population of sixty was obtained. S_c consisted of thirty-six women and twenty-four men: the age range was

⁹The researcher defined Urban Indian for this sample as the Albuquerque Area Office does--Indians that are not Navajo, Pueblo, Mescalero Apache or Northern Ute.

Exhibit No. 6—Continued

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from eighteen years to eighty-two years: the educational range was between 0-years to post-college.

Nine high-status informants from the Indian community within the Albuquerque Area were interviewed. These high-status informants included three Community Health Representative Coordinators, two Mental Health Coordinators, two Community Case Workers, one tribe employed community worker, and two former Indian Health Service Medical Doctors. Therefore, the sample population includes $S_c=60$, $S_d=34$, and high-status informants = 9: giving a total sample population of 103.

Prior to entering each community, the researchers discussed the study, methodology, and sample needed with the Governor or President of each community. The Governor or President gave permission to enter the communities, obtained community cooperation by announcing the need and purpose of the study to the community, assigned interpreters when needed, discussed problems specific to each community with the researchers and requested feedback from the researchers at completion of the study.

Prior to entering each health facility, the researchers discussed the study, methodology, and sample needed with the Hospital Administrator, Service Unit Director, Medical Director of Clinical Services, Director of Nursing Service and the Nursing Supervisor.

Indepth interviews were conducted with both the deliverer group and the consumer group using the questionnaires as a guide.

Method of Data Collection

Using the questionnaire as a guide, each of the two researchers

Exhibit No. 6—Continued

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interviewed one subject at a time.¹⁰ Each interview took from 45 to 60 minutes. The questions were open, so that each subject was encouraged to freely express his thoughts and feelings. Each subject was assured of confidentiality. The subjects were further told that the information may be helpful in bringing about changes in the Indian Health Service which could be beneficial to them.

Verbatim notes were taken. The subjects were told that what they had to say was important and that the researcher was using notes to help remember what was said and to aid her in making comparisons with what other participants had to say. Most subjects seemed willing and most generally eager to participate in discussing both the "good" and "bad" points of Indian Health Service.

Data Processing

Part I - Background Information was tabulated for both groups.

Part II - of D₂-Satisfaction of Deliverers of Health Care Services and Part II - of C₂-Satisfaction of Consumers was tabulated and mean percentages of those stating satisfaction and dissatisfaction were done for the consumer groups and the deliverer groups. This data therefore was made available for further comparison between groups and their background information. Areas of most dissatisfaction were tabulated.

Part III - of D₂ and of C₂-How are the value incongruencies in a cross-cultural system dealt with? Were tabulated as to most frequent

¹⁰The exception to this was when an interpreter was being used. One researcher and the interpreter worked together in order to lessen misunderstandings in obtaining the information. During these interviews, the second researcher took verbatim notes.

Exhibit No. 6—Continued

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responses of each group. A code ¹¹ for D₂ had been previously devised to be used with items A, B, and D of Part III. The responses to these questions were coded so that the identity of the respondents' professional orientation (Medical or Nursing) and community was known to the researchers but not to the panel of judges. A panel of three judges¹² were given the code sheet and were read verbatim responses of subjects to the above stated questionnaire items and were asked to judge whether or not the answers given reflected knowledge and opinions which would be positive or negative factors in the respondents' work within the Indian community.

Part IV - of D₂-Testing for the delegating of responsibilities by the deliverers of health care to the consumer of health care was tabulated.

Part V - of C₂-Testing for consumer acceptance of responsibility of community control and decision-making was tabulated.

Summary

The selection of the setting and sample were discussed. The results of the pilot study were reported. Discussion of the questionnaire designed by the researchers was presented, along with the plan for administering it to the consumer and deliverer groups of health care services. Analysis of data received on 103 respondents was outlined.

¹¹See Appendix C.

¹²The panel of judges consisted of two Indians and one non-Indian. The non-Indian judge was a psychiatrist and was not an employee of Indian Health Service. The two Indian judges were members of the Urban Indian Community and had not been included in the data collection process.

CHAPTER IV

RESULTS OF THE STUDY

Introduction

The findings and interpretations of the data for each of the five subproblems discussed in chapter III are presented in this chapter. Findings and interpretations of the data collected from the contracted facility will be presented separately and will follow the presentation of findings and interpretations of data collected for Indian Health Service facilities. Additional findings and interpretations based on the data are also presented.

Findings and InterpretationsSubproblem I

What is the extent of satisfaction for the deliverers of health care services based on their own perceptions?

Findings: Table I shows the percentages of individuals within the deliverer group stating satisfaction with their ability to function within Indian Health Service (IHS). The questionnaire items fall into three major categories. These categories are:

(A) Questions 1-6 are related to those areas of IHS over which the deliverers have no control. The mean percentage of individuals within the deliverer group stating satisfaction with question 1-6 is 28 percent*. Figure 1 and Figure 2 show the percent of individuals

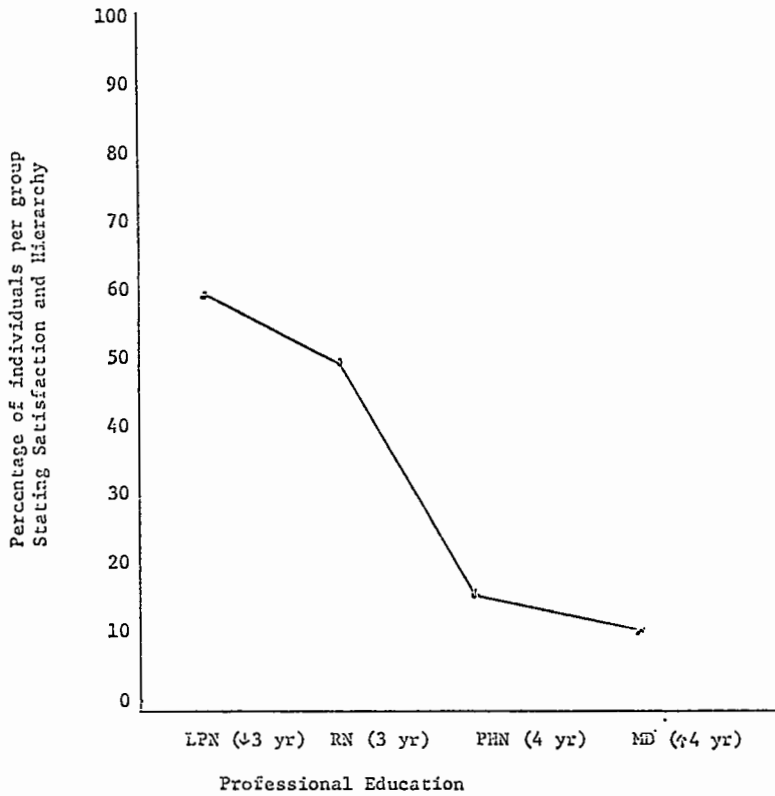
*Since the personnel does have some internal control over the ability of personnel, this item was not included in the mean percentage of satisfaction.

TABLE I
 PERCENTAGES OF INDIVIDUALS WITHIN THE DELIVERER GROUP STATING
 SATISFACTION WITH INDIAN HEALTH SERVICE

QUESTIONNAIRE ITEMS	(%) SATISFIED
<u>Category A:</u> Deliverer has no control X = 28%	
1. Ability to practice in IHS	44
2. Hierarchy	54
3. Orientation	5
4. Physical facilities	29
5. Numbers of personnel	28
6. Ability of Personnel	44
<u>Category B:</u> Deliverer has control X = 60%	
7. Use of technical terms	41
8. Describe symptoms	39
9. Cooperate--diagnosis/treatment	92
10. Clinic waiting time	66
11. Hostility	69

FIGURE I

A LINE GRAPH OF THE RELATIONSHIP BETWEEN PROFESSIONAL EDUCATION AND AUTONOMOUS FUNCTIONING AND SATISFIED WITH THE HIERARCHY OF INDIAN HEALTH SERVICE



...

FIGURE 2

A LINE GRAPH OF THE RELATIONSHIP BETWEEN PROFESSIONAL EDUCATION AND AUTONOMOUS FUNCTIONING AND SATISFACTION WITH ABILITY TO PRACTICE WITHIN INDIAN HEALTH SERVICE (IHS)

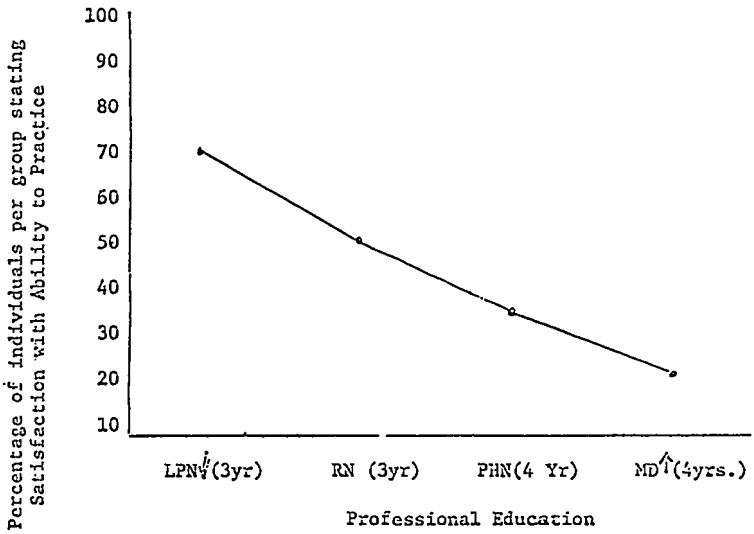
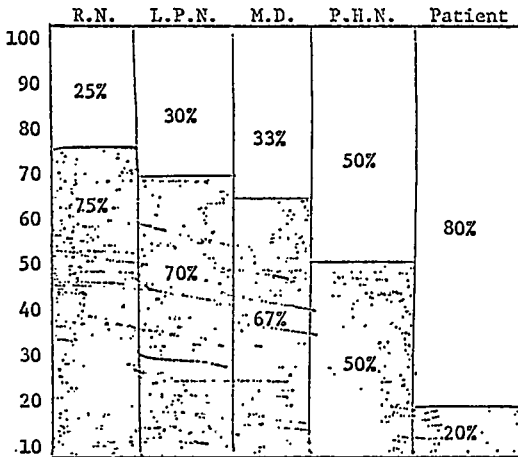


FIGURE 3

A bar graph showing the percentage of individuals within the consumer group and within the deliverer group (by profession) stating satisfaction or dissatisfaction with clinic waiting time.



 dissatisfied

 satisfied

stating satisfaction with the hierarchy and ability to practice relative to length of professional education and job autonomy. As professional education and job autonomy increase, satisfaction with hierarchy and ability to practice decreases.

(B) Questions 7-10 are related to those areas of IHS over which the deliverers have direct control. The mean percentage of individuals within the deliverer group stating satisfaction with questions 7-10 is 60 percent. Figure 3 shows the percent of individuals within each professional group that are satisfied with clinic waiting time. The Registered Nurse group has the highest percentage of individuals stating satisfaction with the clinic waiting time. The Licensed Practical Nurse group has the second largest percentage, the Medical Doctor group has the third largest percentage and the Public Health Nurse has the smallest percentage of individuals stating satisfaction with the clinic waiting time.

(C) Question 11 is designed to gain information--"How frequently are you confronted by overt or covert hostility from Indian patients?". Eighty-nine percent of the deliverers interviewed stated that they were confronted never or only infrequently with hostility.

Interpretations: According to the data (Category A), the extent of deliverer satisfaction is low (group mean $X=28\%$) in those areas of IHS over which the deliverer has no control. These findings are consistent with the researchers' theoretical model that satisfaction will be low in those areas over which the deliverer has no control. These areas relate to what Jonas refers to as the building blocks of a

health care system.¹ Jonas² outlined two sets of building blocks--

(1) The first set consists of capital structure, expense budget and the quantity and quality of staff. Questions 4-6 of Table I correlate with this set of building blocks. The data shows that deliverer satisfaction in these areas are low. Although the physical facilities vary from community to community, only 29 percent of all deliverers interviewed stated satisfaction with the physical facilities. A Physician described on IHS facility as being "totally inadequate" regarding the actual building, equipment and personnel. This same facility which supposedly services 1500 people is open one-half day/week, two weeks out of the month and one day/week the other two weeks out of the month. Physicians stated that medical judgements and medical decisions are frequently overshadowed by lack of funds. Physicians state that toward the end of the fiscal year when contract funds are low, they are instructed to order surgery for emergencies only. If allowed to go untreated, many surgical procedures which are considered elective will eventually progress to the emergency stage with the result of increasing the surgical risk. The supply of personnel, especially professional nursing personnel falls far below the minimum necessary for providing proper health care. The clinic in community "W" is run by a Licensed Practical Nurse. Licensed Practical Nurses are not properly prepared to function in the capacity of supervisor of

¹See Chapter III.

²Jonas, op. cit., p. 917.

Exhibit No. 6—Continued

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an outpatient clinic. Filling the position of clinic supervisor with a Licensed Practical Nurse only succeeds in causing frustration for the L.P.N. herself, and for the physician with whom she works. This staffing pattern also produces sub-standard health care for Indian people who have a right to quality care. In the same institution, one Licensed Practical Nurse and one Registered Nurse were filling prescription. At least two of the ten consumers interviewed in that community stated that the Nurse had made errors in their medications. In IHS Clinic "R", there was one Registered Nurse and one Nurse Aide. An average of 60 patients are seen at that clinic facility in an afternoon. The R.N.'s working time is spent with the technical aspects of health care, i.e., giving injections, administering treatments, etc. There is not time for the R.N. to perform other nursing functions, i.e., health teaching, explanations concerning illness and medications, and making nursing observations relevant to the total health of the patient. Here again, IHS is providing sub-standard care for Indian patients and a work situation in which the professional nurse experiences feelings of frustration and futility. It is not surprising that many of those professionals who continue to work under such conditions eventually learn to defend themselves against feelings of frustration by becoming insensitive and calloused to the needs of the Indian patient.*

(2) The second set of building blocks consists of organization, financing and patterns of practice. Questions 1-3 of Table I

*That is not to say that this particular nurse has.

Exhibit No. 6—Continued

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correlated with this set of building blocks. When asked "Are you able to practice your profession to the utmost of your capabilities while working in IHS?"

Less than half, 44 percent of the deliverers stated that they were satisfied. The professional group with the least amount of satisfaction with ability to practice was the Medical Doctors (22 percent). Of those Medical Doctors stating dissatisfaction with ability to practice, 100 percent listed hierarchy and bad bureaucracy as the greatest cause of dissatisfaction. This data correlates with other findings: of the non-career medical officers interviewed, 100 percent gave bad bureaucracy and the hierarchical system as their reasons for not making a career of IHS.* Some of the specific examples given for dissatisfaction with the bureaucracy and hierarchy are:

"The supply officer, for example, makes no big effort to fill orders. I sent to Albuquerque several months ago for one endotracheal tube (emergency equipment) and I haven't got it yet, and there's nothing anyone can do--he's civil service--no one can fire him and he knows it."

"The way money is handled. If you are able to save money one year--you can't use it the next year--its turned back into the general fund and you lose it. It stifles initiative."

"Clinical Doctors have to spend too much of their time with non-clinical matters--paperwork, meetings where everything is discussed and nothing settled."

"It doesn't take a Doctor to be the Service Unit Director. Doctors don't make that good of administrators anyway--"

* This does not support the stated policy of IHS that if a community wants a physician to remain in that community longer than two years, it is the responsibility of the community to get him to stay.

Exhibit No. 6—Continued

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that's not their inclination. Even if it were--a Doctor's time can best be spent practicing medicine."

"On the Service Unit level, we have nothing to say about positions. We cannot give care without the personnel."

These areas of deliverer dissatisfaction thus far mentioned are related to the basic building blocks of a health care system. The researchers have observed through participant observation--of IHS at all levels--that it is not the consumer, nor the deliverer, nor the administration that have control of the building blocks. The control of IHS lies with the Secretary of Health, Education and Welfare, the Congress, and the President. This supports the researchers' theoretical model that although the present official policy of the Federal Government is Indian Self-Determination, the Congress and the President have thus far been reluctant to relinquish or share their control over the Indian health system. Until the Indian people have some control over their own health care relative to capital structure, expense budget and supply of personnel and staff, Indian Self-Determination will continue to be a goal which the State encourages through State of the Union Messages, Television, and radio, but a goal which the State blocks through appropriations and legislation.

There are other areas involved in deliverer dissatisfaction with the hierarchy over which administration does have control. Only five percent of the deliverers interviewed stated satisfaction with orientation into IHS. Ninety-five percent of the respondents stated: (1) that they received no orientation; (2) that the orientation they did receive was irrelevant to actual practice; or, (3) that the orientation did not give them sufficient knowledge or insight into the culture.

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traditions, and life styles of the Indian people with whom they were to work. This data also indicates that there are not mechanisms for mutual feedback existant between the Area Office and the Service Unit. Otherwise, the Area Office would have improved the orientation. Other statements were made by deliverers which might also indicate that there is an absence of mechanisms for mutual feedback. Some of these statements are:

"No one above the Service Unit is responsive to the needs of the Service Unit. I don't think they know what our needs are--or even care."

"The people in the Area Office do not really know what a P.H.N. (Public Health Nurse) is, what they have to offer or the proper way to use them."

"The bureaucrats at the Area Level and above aren't really aware of what's going on at the Service Unit level--yet that's where all the decisions are made."

It was the observation of the researchers that the administration was aware of at least most of the needs of the Service Units. Administration frequently cannot fulfill these needs due to limited funds or limited staff positions (once again, the basic building blocks). However, due to the absence of mutual feedback, the Service Unit personnel rightfully perceive the administration as being unresponsive. If there was a free flow of communication between the Service Unit and the Area Office, much understanding and frustration could be avoided. Figures 1 and 2 also support the above statements that much of the deliverer dissatisfaction with the hierarchy can be attributed to absence of mutual feedback mechanisms. On the Service Unit level, the less autonomous the job the individual holds the more likely he is to be satisfied with the hierarchy and the more likely he is to feel able to

practice his profession to the utmost of his capabilities within IHS. This could be due to the fact that there is continuous interaction between the deliverers in the Service Unit level. The physicians are included in the hierarchical system of the Registered Nurse; the Medical Doctor and the Registered Nurse are included in the hierarchical system of the Licensed Practical Nurse. Since there is interaction between these individuals of a feedback nature, the decisions made at the Service Unit level are more relevant and responsive to the actual needs of those involved.* This data correlates with the researchers' theoretical model that unless there are mechanisms for mutual feedback between sub-systems, the system becomes dysfunctional.

According to the data (Category B, Questions 7-10), the extent of deliverer satisfaction is higher - $X=60$ percent in those areas of IHS over which the deliverer has control than in those areas over which he has no control (Category A, Questions 1-3), $X=28$ percent. These areas relate to direct care and indicate the deliverer-consumer relationship, i.e., whether the relationship is of the helper-inclined type or of the partnership type. Questions 7-10 shown in Table I are indicators of the deliverer-consumer relationship.**

A comparison of the extent of deliverer satisfaction ($X=60$ percent) with that of the consumer ($X=25$ percent) shows that the extent

*Unfortunately, this does not include the consumers-see subproblems 4 and 5.

** These questions are not only indicators of the one-to-one relationship involved in direct care but also are indicators of the deliverer-consumer relationship in the total Indian Health system.

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of deliverer satisfaction is much greater than that of the consumer. This indicates lack of insight on the part of the deliverer as to what the consumer sees as needs. This data indicates that the deliverer is functioning with little or no regard for the needs of the consumer. The deliverer is doing something to and for the patient (helper-helpee) rather than working with him (partnership). The deliverer is functioning in a manner which calls for no input or participation on the part of the consumer. As a result, the needs of the deliverer but not those of the consumer are being satisfied. This is compatible with Galiher's statement that "without substantial consumer input, health institutions can become excessively self-serving and, in fact, tangential to... community health problems."³

The deliverers were relatively satisfied with their verbal communications to the patients in the area of technical terminology. However, the data shows that the consumers were not satisfied (Deliverer X=41 percent and Consumer, X=24 percent). This correlates with the above, that the deliverer is satisfying his needs but not those of the patient. In this case, the professional seems to be satisfying his need, most likely acquired through the process of professional socialization, to tell the patient what is wrong with him and what to do. This is substantiated by statements made by three Public Health Nurses in three different Indian communities. All three P.H.N.'s made statements similar to the following:

³Galiher; op. cit., p. 100.

Professionals assume the patients understand what they are talking about without checking it out with the patient.

Professionals are more interested in saying what they think needs to be said than in having the patient understand what his health problem is and what needs to be done in order to correct it.

In Category B, the area of least satisfaction for the deliverer group was the patients' willingness to describe symptoms (only 39 percent of the deliverers interviewed stated satisfaction as compared to the mean for the overall category of 60 percent). Many of the respondents stated that patients were unwilling to describe symptoms, had difficulty in describing symptoms, or were unable to describe symptoms. This data correlates with David Crockett's statement that, "Many Apaches have difficulty in describing their symptoms."⁴ However, considering consumer responses, it is possible that the deliverers consciously or unconsciously set up barriers to having patients describe symptoms. Thirty-eight percent of the consumers stated they did not feel free to discuss their illnesses with the doctors or nurses. The following are a few of the statements made by the Indian consumers:

"They never listen to what I have to say."

"They act like they know what's wrong with me before I tell them (how I feel)."

"They act like they don't believe what you say when you tell them what's wrong with you."

"The doctors act like they know more about how you feel than you do."

⁴Crockett, *op. cit.*, p. 403.

Exhibit No. 6—Continued

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"I had fever one night, it was 101° in the evening, as it got later, the temperature went up, and I had chills. The next day I went to the clinic. It was in the morning and my temperature was 98.8°. They acted like I was lying to them and that I had not had fever. They cultured my throat. That evening it was back up to 101° with chills later in the night. I wonder what they think our reason is to lie about something like that?"

Indian people have learned, that in general, the doctors and nurses really do not want to hear the patients symptoms (input from or participation by the patient), and therefore are reluctant to describe symptoms. This correlates with Knutson's statement that, "If members of a minority group expect to be rejected, to be given inferior treatment, or to be regarded as socially inferior, they are not likely to seek or accept services offered."⁵ Why indeed should an Indian patient describe his symptoms (reveal self) if he is to be ignored, made a liar of, or have his words doubted? It is not the place of the Indian consumer to convince the IHS doctor that he is ill and to beg for treatment.

The researchers would like to note here that this interpretation

is in keeping with an analysis of relationships--that is looking at both deliverer and consumer. In the past pseudo-anthropological health professionals have looked only at the recipients of health care in order to discover problematic areas in the health care system. This "general stance ... implies that there is something 'wrong' or that there is some 'shortcoming' with the target population..."⁶ Other health professionals have noticed the reluctance of Indian

⁵Mito, op. cit., p. 12.

⁶Sol Levine, Unraveling Technology and Culture in Public Health, p. 238.

patients in describing symptoms but have never looked toward the deliverer to find the verbal and non-verbal communication patterns which set up barriers designed to prevent Indian people from active verbal participation. Some of these health professionals have ascribed the phenomena to something innate to Indian people--"Indians have difficulty in describing symptoms." Others looked toward the relationship that some Indian people have with the Shaman--"The Shaman is suppose to know what's wrong with the patient without the patient having to describe symptoms."--therefore, the patient thinks the Western trained physician doesn't need to have symptoms described. It seems as though some health professionals will go to any length to keep from looking at their own behavior or the behavior of their colleagues.

It would be expected that--if reluctance in describing symptoms were indeed due to barriers put up by the deliverers--the difficulty would not be observed in relationships in which the deliverers did not put up such barriers to communications. Statements from several of the more perceptive health professionals support this interpretation. These health professionals reported that, "When the patients find out that you really are interested in them (in what they have to say) they are more open to confiding in you."

For Category B (Table I), the area of greatest deliverer satisfaction was the cooperation of the patient during diagnosis and treatment (92 percent). For the consumer, (Table 2), however, satisfaction was much lower (22 percent). The discrepancy seems to lie in what actually transpires between deliverer and patient during diagnosis and treatment. Consumers state that they are able to "cooperate" but the relationship is one in which they are being told what is wrong with them and what to do rather than the relationship being one in which their diagnosis and treatment is discussed with them.

Sixty-six% of the deliverers were satisfied with length of waiting time. Of the consumers interviewed, only 20 percent stated

that they were satisfied with the length of clinic waiting time. The majority of those stating dissatisfaction, stated that it is not only due to the actual waiting time but the total disregard of the acuteness of illness. Respondents stated that priority of seeing the doctor was on a first come first served basis rather than on how sick or uncomfortable the patient is. The Registered Nurse group is the deliverer group having most control over which patient will be seen first. Seventy-five percent of all Registered Nurses interviewed stated that they were satisfied with clinic waiting time.* Here again, services are more geared to the needs of the staff than to those of the consumer-self-serving.

Category C (Table I) shows that 89 percent of the deliverers did not experience an inappropriate amount of hostility from the Indian patients. This does not support the belief within higher levels of Indian Health Service that physicians are physically abused by drunk and hostile Indians.** There was in fact, only one incident during the entire study period in which a physician was physically assaulted. The incident, as reported to the researchers by a consumer, is as follows:

A man accompanied his relatives on an emergency visit to the IHS Clinic. The physician there has made it well known that he does not like visits to the clinic after regular clinic hours. Furthermore, it was reported by many members of the community that this particular physician is in the

* It is interesting to note that the clinic facilities did not allow direct patient observation by the nurse while she was in the examining area. Future construction should promote rather than obstruct staff-patient interaction. Physical inconvenience, however, cannot totally account for the lack of nurse-patient interaction.

** It was personally communicated to the researchers at the main IHS Office that physicians are physically abused by patients.

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habit of sending any patient who has been drinking to jail if they come to the clinic. The reason for the emergency visit was that an Indian woman was having difficulty. She was sick and had been vomiting. The party of two men and the woman had had a few beers during the course of the evening. The doctor became verbally aggressive and began abusing the woman for drinking and coming to the clinic after hours. The doctor refused to treat the woman upon which the younger man hit the doctor.

The incidents of physical abuse are few and represent drastic measures being applied to drastic situations.

Sub-Problem 2

What is the extent of satisfaction for the consumer of health care services based on their own perceptions?

Findings: Table 2 shows the percentage of individuals within the consumer group stating satisfaction with health care provided by IHS. Only 38 percent of the respondents answered in the affirmative when asked--Does IHS provide you with the best care possible?* Figure 4 shows that both age and education influence the consumer's satisfaction with health care services provided by IHS. The younger the consumer is, and the more schooling he has received, the less likely he is to be satisfied with the health care services provided by IHS. Figure 4a shows that there is a significant difference between consumers with a high school education and more, and those consumers with less than a high school education. A greater percentage of consumers with a high school education and more stated dissatisfaction with IHS than those with less than a high school education. The null hypothesis of no difference was rejected at the .005 level of significance by use of the

*Variations of this were, "Do you get good care from IHS?", "Does IHS provide as good a service as private patients get?"

Chi-square for years of schooling. Table 4b shows that there is a significant difference in consumers 55 years and younger and those 56 years and older. A greater percentage of consumers 55 years and younger are less satisfied with IHS than those 56 years and older. The null hypothesis of no difference was rejected at the .005 level of significance by use of the Chi-square for age.

Questions 1-4 in Table 2 shows the extent of consumers satisfaction with IHS in those areas over which neither the deliverer or the consumer have control.* The mean percentage of individuals within the consumer group stating satisfaction with IHS is 25 percent.

Questions 5-9 in Table 2 shows the extent of consumer satisfaction with IHS in those areas over which the deliverers but not the consumer has control. The mean percentage of individuals within the consumer group stating satisfaction with IHS is 24 percent.

Interpretations: A significant number of consumers interviewed (62 percent) stated that IHS does not provide adequate health care services.** Stated reasons for dissatisfaction had to do with (1) quantity, i.e., numbers of personnel, facilities, number of clinic days, availability of emergency services and types of services like general medical, dental, eye, etc., and (2) Quality, i.e., ability of staff, how the professional was able to use his ability while working in a cross-cultural setting,*** and how the staff treated the patient

*Corresponds to Category A Sub-problem 1 of deliverer data.

**Question 1, Table 2.

***See Subproblem 3--How are the cross-cultural incongruencies existant in IHS dealt with?

Exhibit No. 6—Continued

E1

TABLE 2
 PERCENTAGES OF INDIVIDUALS WITHIN THE CONSUMER
 GROUP STATING SATISFACTION WITH IHS

QUESTIONNAIRE ITEMS	(%) SATISFIED
<u>Category A: Neither Deliverer or Consumer Has Control</u>	
1. Does IHS provide best care possible	38
2. Physical facilities	36
3. Numbers of personnel	10
4. Abilities of Personnel	14
<u>Category B: Deliverer but not Consumer Has Control</u>	
5. Use of technical terminology	24
6. Feel free to discuss illness	38
7. Cooperate--diagnosis and treatment	22
8. Clinic waiting time	20
9. Does staff seem interested in you	18

FIGURE 4

Consumers stating satisfaction with IHS by age and education.

	55 years and older		56 years and older	
	Education		Education	
	H.S. \nearrow	H.S. \swarrow	H.S. \nearrow	H.S. \swarrow
Satisfaction S. with health care--IHS:	4	3	0*	12
D.	21	7	0	3

FIGURE 4a

Consumers stating satisfaction with IHS by education.

	H.S. \nearrow	H.S. \swarrow
	4	15
	21	10

$\chi^2 = 7.879$
.005, 1

FIGURE 4b

Consumers stating satisfaction with IHS by age

	55 \swarrow	56 \nearrow
S	7	12
D	28	3

$\chi^2 = 7.879$
.005, 1

Exhibit No. 6—Continued

TABLE 3

PERCENTAGE OF DELIVERERS GIVING POSITIVE RESPONSES
TO QUESTIONS OF CROSS-CULTURAL SIGNIFICANCE*.

QUESTIONNAIRE ITEMS III A&D	MD	RN	PHN	LPN
What do you know about Indians?	22	50	50	
What do you think about Medicine Men?	56	75	83	100

* See Appendix C--Code Sheet

TABLE 4
 COMPARISON OF RESPONSES BY DELIVERER AND CONSUMER
 TO QUESTIONNAIRE III_d E AND III_c E
 "WHAT DO INDIANS VALUE?"

RESPONSE	S. DELIVERER	S. CONSUMER
No difference	28	1,5
Family	33	50
Land	14	30
Religion	6	20
Interpersonal Relationships	14	27
Culture	10	15
Livestock	0	8

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interpersonally, e.g., as a social or intellectual inferior. The United States not only has a moral obligation to American Indian People to provide health care but also a legal obligation incurred by treaty agreement. In the 1860's, the United States realized the monetary cost of Indian genocide had rose to a million dollars per Indian.⁷ In lieu of killing cost and pressure exerted by land-hungry expansionists, and gold crazed miners, the Government (by the people and for the people) decided it would be cheaper to "maintain" Indian people on reservations and to provide those needs of the Indian people which they would no longer be able to provide for themselves if they agreed to confinement. Every method at the disposal of the United States has been used in an attempt to terminate this obligation incurred by the Federal Government to provide health and education to Indians. One such attempt was to convince the Indian people that they were receiving health care as a gift, dole, a charitable gesture on the part of a benevolent and paternal Government rather than as their right in partial payment for conquest. Many Indian people were deluded into believing that they should be grateful for whatever they received in the form of health care and should not complain which would show ingratitude and may result in withdrawal of the "gift" as a just punishment handed down by the Great White Father. In recent years, Indian people are becoming more and more aware of their rights as Indian people. As this awareness increases, and as knowledge of what constitutes adequate health care

⁷Dee Brown, Bury My Heart at Wounded Knee (New York: Bantam Books, 1971), p. 119.

increases satisfaction with health services provided decreases (see Figure 4, 4a and 4b). This data also correlates with Galiher statement concerning health consumers in general; that as the consumers educational level increases and expected living standards increases demands for consumer involvement (better health care) also increases.⁸

The interpretations of the findings relevant to consumer satisfaction with those aspects of IHS over which neither the deliverer nor the consumer have control were for the most part presented along with those for the deliverer--see subproblem 1. The data showed that the extent of satisfaction was low for both groups in this area. There was one exception--satisfaction with the abilities of personnel was greater for the deliverer group (X=44 percent) than for the consumer group (X=14 percent). Respondents' statements of dissatisfaction with the staff's abilities fall into two major categories: (A) IHS recruits and retains poorly qualified personnel; and, (B) the patterns of practice set by IHS are sub-standard.

(A) Respondents stated that IHS recruits medical doctors who are inexperienced and "still learning" and that by the time they acquire experience they leave IHS. All of the non-career physicians and the two physicians (high status informants) who left IHS stated that their reason for leaving IHS was due to "bad bureaucracy". IHS maintains a system which rejects physicians on the direct patient care level.*

⁸Galiher, *op. cit.*, p. 99.

*The two physicians who have already left IHS stated a strong affinity for Indian people and a desire to continue their work with Indian people but were unable to tolerate the bureaucracy. . . . ing to them, followed the Peter Principle.

Exhibit No. 6—Continued

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The system maintained by IHS to recruit and retain Registered Nurses is one which promotes the development of a substandard nursing staff. One nurse stated that she entered IHS because of low standards--her educational qualifications did not meet the standard of U.S. Public Health Service but did meet those of IHS. There was only one Masters level Public Health Nurse employed at the operational level in the four communities which made up the sample population.** The career-ladder and GS-rating in IHS is designed to attract those nurses whose qualifications and abilities would place them in the lower levels of the work forced outside IHS.

(B) Several respondents stated that standards of quality care set by IHS were below those of the national average. In one IHS facility, a nursing supervisor stated that the standard set for the quality of Nursing practice was extremely low. That there was no meaningful inservice programs, that there was no mechanism for the development of nursing personnel, that promotions depended on time and tenure and not qualifications and ability. That the whole institution was permeated with a laissez faire attitude toward quality care. No less than two respondents from each sub-population sample (12 respondents) and two high-status informants stated that physicians were qualified but something negatively affected many of the physicians

**Bachelors level nurses are qualified to work in Public Health Nursing but nursing standards are set for this level nurse to work under the direct supervision of a Master's level Public Health Nurse.

ability to utilize their knowledge when working with Indian people. The respondents stated that physicians routinely underestimate the seriousness of illness when treating Indian people. Respondents stated that it is as though the physician is convinced that there is nothing serious wrong with the patient and therefore, fails to ask pertinent questions, does not believe the patient when he describes his symptoms, underestimates the seriousness of the symptoms described or fails to recognize a set of symptoms as being indicative of a certain illness and therefore does not carry through with prescribed diagnostic tests. One example given by a CHR is as follows:

An old man went to the clinic and told the physician that had severe stomach pains, nausea and vomiting. The physician told the patient that he had the flu and there was nothing for it. Three weeks later, the patient returned to the clinic with the same symptoms and weakness. The physician again diagnosed the condition as the "flu" and sent the patient home. The CHR was called to the home later that week because the patient's condition has worsened. Upon questioning the CHR, learned that the patient's stomach pain was most severe after eating, that he had been vomiting blood and he had black tarry stools. The patient was taken to another physician and diagnosed as having an ulcer.

This is but one example of many such incidents reported throughout the study. The data is strong enough to suggest that many physicians fail to utilize the medical knowledge at their disposal while working with in the IHS.

The interpretations of the findings relevant to consumer satisfaction with those areas of IHS over which the deliverer has control were presented along with those of the deliverer--see subproblem 1.

Subproblem 3

How are the value incongruencies that exist in a cross-cultural system dealt with?

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cent of the deliverers stated that there were no differences in the values of Indian people and those of non-Indians: Only 1.5 percent of the Indian consumer gave a response of no difference; 50 percent of the consumers as compared with 33 percent of the deliverers, gave the family as being highly valued by Indians. Thirty percent of the consumer, as compared with 14 percent of the deliverers, gave land as being highly valued; 20 percent of the consumers as compared with six percent of the deliverers, gave religion as being highly valued: Twenty-seven percent of the consumers, as compared with 14 percent of the deliverers gave interpersonal relationships as being highly valued: Fifteen percent of the consumers, as compared with ten percent of the deliverers gave culture as being valued; and eight percent of the consumers, as compared with zero percent of the deliverers, gave livestock as being highly valued by Indians. Of the 29 deliverers interviewed, a total of 20 different responses were given to the question, "What do Indians value?" Of the 60 consumers interviewed, a total of six different responses were given to the same question.*

Interpretations: According to the data, the deliverers knowledge of Indian people is less than what could be expected of health professionals working with, and in most instances, living within Indian communities. There is a significant mismatch when comparing the number of times an item was mentioned by the deliverer group as being valued by Indians as compared to the number of times the same item was mentioned by the consumer group (see Table 4).

*There were three atypical consumers. This figure does not include the three atypical consumers.

This shows that there is a mismatch between what the deliverers say that Indians value and what the Indian people themselves say they value. There was a significantly larger number of different responses within the deliverer group (29 respondents: 20 responses), as compared to the consumer group (60 respondents: 6 responses). In this, the Indians are collectively in more agreement (of one mind) as to what Indians value than are the non-Indians.

One means by which the deliverers could become more cognizant of Indian people, their values, way of life, and how these differ from those of the deliverer is through an orientation program. However, as seen previously, this method of dealing with cross-cultural differences is not being adequately utilized by IKS. Neither the deliverer nor the consumer groups are doing much on an individual basis to deal with cross-cultural factors. When the deliverers were asked what they have done to get to know Indian people, the majority of the respondents stated nothing other than going to the ceremonies. This is no more than what tourists routinely do while vacationing. When the consumers were asked what they had done to help the doctors and nurses get to know and understand Indian people, only 20 percent stated that they had made strong efforts in this area. For well over 100 years, the White Man has viewed Indian religion, culture, and life styles, as being superstitious, primitive and ignorant. It is not surprising that Indian people are reluctant to share their life experiences with most White people. However, when Indian people come into contact with non-Indian individuals who are not hindered by cultural stereotypes and prejudice, Indian people relate with them on an equal

status basis. Several of the more intelligent health professionals whose interpersonal relationships are less hampered by culturally defined notions of "American superiority", have become productive members of the Indian community in which they live and work. One such physician stated that the first move in the establishment of consumer-deliverer relationships should be made by the health professions--in view of the realistic suspicion Indian people have of non-Indians.

Table 3 shows that the professional nurse is more likely to deal with the cross-cultural aspects involved in the delivery of health care than is the physician. This could be due to the emphasis placed on working with the total patient found in the professional education of RN's. A greater percentage of both doctors and nurses have an understanding of medicine men than either group has of Indian people in general. This could be due to the attention given to Medicine Men in the literature of recent years.

Data shows that there is an absence of mutual feedback between the consumer and deliverer group in the area of cross-cultural value incongruencies. Value incongruencies is not only a matter of actual knowledge but includes strong beliefs to which individuals adhere and by which their lives are guided. It is reported that the members of one of the sub-sample populations believe that women are not suppose to take medications during certain stages of pregnancy. The physician who was given this information stated "Well, she can't very well refuse a shot." and there upon ordered an injection. This

behavior on the part of health professionals shows a total disregard for the rights and dignity of the people with whom they work. The physician, in this case, did not act through ignorance. The physician perceived himself to be in a power struggle. This is one of the four physicians who is fond of saying: "Nobody is going to tell me how to practice medicine." The researchers are not attempting, nor are they suggesting that anyone else attempt to tell physicians how to practice medicine. However, there are patterns of relating with patients that do not widen the gap between consumer and deliverer, that do not undermine basic human dignity, that do not act as negative forces in having patients seek health care, and which do not perpetuate the stereotype of WASP as being arrogant, ignorant and overbearing.

Subproblem 4

To what extent are the health professionals delegating responsibilities of health care to members of the Indian community; and what is the reaction of the professional?

Findings: One-hundred percent of the deliverers interviewed stated that they were in favor of community involvement, at least in theory. However, only 12 percent stated that the Indian people presently had an input into the health care system. Only 77 percent of the deliverers interviewed knew about or had heard of the Indian Health Advisory Board. Of these, only 49 percent knew enough about the Board to discuss the purpose and function. The following shows the percent of individuals within each health care group that knew of the Advisory Board:

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Registered Nurses	100%
Public Health Nurses	100%
Medical Doctors	67%
Licensed Practical Nurses	40%

Of those RNs who knew that there was an Advisory Board, only one-half had had any interaction with the Board or knew the purposes and functions of the Board; the other half knew only that there was an Indian Health Advisory Board but knew nothing of their purposes and functioning. None of the RNs expressed any negative thoughts or feelings concerning the Advisory Board. Of those Public Health Nurses who knew of the Advisory Board, 17 percent knew nothing of their purposes and functioning. None of the PHNs expressed negative thoughts or feelings concerning the Advisory Board; of the Licensed Practical Nurses who knew about the Advisory Board, 50 percent knew nothing of their purposes or functioning. None of the LPNs expressed negative thoughts or feelings concerning the Advisory Board. Of those (67 percent) of the Medical Doctors who knew about the Advisory Board, 100 percent stated that they knew about the Board's purposes and functioning. Fifty-six of the physicians, at some time during the interview, expressed fear and concern that some one would "tell me how to practice medicine". These statements were made during discussion of community involvement and/or discussion of the Indian Health Advisory Board.

Only 39 percent of the deliverers stated that they were actively involved in guiding or recruiting the young Indian people with whom they came in contact into the health professionals. The following is a breakdown by health care groups of those are are recruiting:

Registered Nurses	100%
Public Health Nurses	33%
Medical Doctors	11%
Licensed Practical Nurses	10%

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Of those deliverers interviewed, 100 percent knew of the Mental Health Coordinators.* All of the deliverers had some knowledge of the purpose and function of the Mental Health Coordinators and stated that they were beneficial and effective.

Of those deliverers interviewed, 98 percent knew of the Community Health Representatives.** Of those deliverers who know the CHRs, 86 percent gave positive statements: three percent did not know enough about the CHR to state whether they liked them or not, and 11 percent gave negative statements. Negative statements were made by one MD, one PHN and three LPNs. The negative statements which were made concerning the CHR were made in reference to individual CHRs and not the principles upon which the program is founded. Three out of the four PHNs interviewed, and one RN stated that when the CHRs initially return from training, they are very difficult to work with. These respondents wondered if the CHRs were receiving negative input as a part of their training program regarding working with PHNs. Reported statements made by CHRs to PHNs are, "You aren't to be telling me what to do. I'm not running errands for you". This and several similar statements were reported throughout the study.

Interpretations: Data shows that little over one-half (68 percent) of the deliverers are knowledgeable about the function and

*The only respondent who did not know the CHR was an LPN who worked in the Albuquerque Indian Hospital.

**CHR will be used to designate Community Health Representative.

purpose of the Indian Health Advisory Board. 'Most of those deliverers who claimed knowledge of the purpose and function of the Advisory Board stated that they themselves had had no contact with the Advisory Board and could not tell the researchers how they themselves had been effected by the Board. This is an extremely strong indication that IHS has not provided health professionals with sufficient information or training necessary for them to work effective within a health system which includes community involvement, e.g., go to Advisory Board meetings, seek an alliance with the Board to obtain necessary personnel, equipment, or facilities. This data also indicates that there is very little consumer input at the operational (Service Unit) level. Data shows that only 12 percent of the deliverers stated that the Indian consumer was presently involved in the health care system. This supports the researchers' theoretical model that it is necessary to have consumer input at the operational level in order for community involvement to be effective.⁴ Information gathered through participant

Exhibit No. 6—Continued

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diately to the tribal council. The tribal council put the Service Unit Director on notice that he was to resolve the problem of the reported health professional. The Service Unit Director took action but was unable to bring about results. The situation ended with the removal of the Service Unit Director. The Service Unit Director was also a physician who was well liked by the community. Had IHS worked with the community in the establishment of a mechanism for mutual feedback (e.g., meetings between the health professionals and community members) the community and the Service Unit Director could have worked together to solve the original problem with the delinquent health professional.

(2) The following is an example of IHS administrators undermining the process of community involvement. Some Area Office officials had a meeting with the Governor at one of the Pueblos. The Area Office officials excluded from the meeting the Area Advisory Board representative from that community. By this behavior, the Area Office officials were giving the Advisory Board member and the Governor of the Pueblo a double message; that, a. IHS recognized this Indian person as representing his community in the area of health since he is an Advisory Board member and at the same time, b. IHS did not recognize him as representing his community in the area of health since he was excluded from a meeting with the Governor which concerned the health of that community. This is a perpetuation of the pattern of relating which the Federal Government has established with Indian people--to say one thing and to do another.

(3) The following is an example of one service unit where there are mechanisms for mutual feedback (meetings between the health professionals and community members). However, IHS has not sufficiently set guidelines of functioning or descriptions of role responsibility for either deliverer or consumer in the decision-making processes. The Advisory Board was asked to make a decision on the spending of a large amount of contracted funds. They were asked, should the contracted funds of the Service Unit be used to save the lives of two dying patients or should the funds be used for the general health care of a larger number of people. The response of the Advisory Board was one of confusion and frustration. Most of the members of the Board were not sure that this is the type of decision they should be expected to make. This could be interpreted as a very punitive maneuver on the part of those health professionals involved--as if to say, "On you Indians want to be involved in decisions, here's one for you." However, the fact remains whether the act was promoted through punitive motives

(conscious or unconscious) or ignorance, IHS is not providing guidelines, role definitions, and training for deliverer and consumer in their new endeavor at community involvement.

The concept and philosophy of community involvement are more a part of IHS than is the actual practice of community involvement. This supports the researchers theoretical model that for community involvement to be a functioning integral part of a health system, more has to be done than to hand down the directive that the community is to be involved. Mechanisms for mutual feedback must be established, training must be provided for both deliverer and consumer and attention must be given to the psychosocial and political aspects involved.

Data on recruitment shows that the health professionals within IHS are not too interested in being joined in their professional ranks by Indian people. The only exception to this being Registered Nurses who report 100 percent that they "use every opportunity to encourage young people to enter the nursing profession." It may not be that the low amount of activity on the part of the physician (11 percent) indicates a reluctance to having Indian people enter the medical professions. Rather, it may be an indication of the physicians' estimation of Indian peoples' ability to succeed in the realm of education. Until there are an appreciable percentage of Indian people as professionals within the health fields--Indian people will have to rely on non-Indians for expertise in the decision-making processes related to health. Until there are more Indian professionals in the health system, Indian involvement will not be complete.

Data shows that the majority of deliverers have a working relationship with the Mental Health coordinators and the Community

Exhibit No. 6—Continued

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Health Representatives. There is some friction between the CHR and the PHN. It has been suggested that the etiology of such friction lies, at least in part, in the training received by the CHRs. It is also possible that the specific functions of the CHR and the relationship between the CHR and the PHN, has not been made clear to those involved.

It is interesting to note that the health professionals have less difficulty in working with Indian people as para-professionals than they do in working with Indian people on an equal status basis--Indian Health Advisory Board. It is possible that IHS, on a macroscopic level, is a reflection of the society at large. Indian people are not seen as a segment of society which is in an autonomous and decision-making position. Therefore, efforts by the Indian people to function in an autonomous and independent manner sets up feelings within members of the majority culture that something is wrong (anxiety increases). This feeling of anxiety sets into motion, behavior directed at putting things back in their proper order (anxiety decreases) which would be to have Indians not behave in an autonomous and independent manner. If this is a factor, much more is called for to effect community involvement than the sending down of directives or the provision of special training programs. One consumer suggested that sensitivity groups, as well as orientation programs, be provided for those health professionals who choose to work in IHS.

Subproblem 5

To what extent are the Indian communities accepting responsibility of community control and decision-making?

Findings: One-hundred percent of the consumers interviewed stated that they were in favor of community involvement, but the majority

of the consumers stated that Indian people had little or no say as to the type of health care they were presently receiving or the manner in which it was being delivered. Only 40 percent of the consumers interviewed stated that they knew about the Indian Health Advisory Board. Of those consumers who knew the Board, 95 percent approved of the Board and expressed no negative thoughts or feelings about the Board.

Of the consumers interviewed, 78 percent stated that they knew the CHR. Of those consumers who knew the CHR, 55 percent stated that they liked the CHR and thought the CHR was effective. Two communities had a mean percent of 87 percent for those respondents stating satisfaction with the CHR. The third community had an average of 33 percent and the fourth community had an average of only 14 percent respondents stating satisfaction with the CHR.

There were Mental Health Coordinators assigned to three of the four communities included in the population sample. Two of the communities had a mean percent of 55 percent for those respondents stating that they knew the MHC. In these two communities, 100 percent of those who knew the Coordinators liked them and thought they were effective. In one community, only 20 percent of the consumers knew the Mental Health Coordinator; of those only 50 percent or one respondent stated that they thought he was an effective health force within the community.

Interpretations: The data show that less than one-half (40 percent) of the consumers interviewed were cognizant of the Indian Health Advisory Board. The Indian Health Advisory Board is the body recognized by IHS as the source of consumer input on the policy and planning levels.* IHS has failed to work with the communities in

*It has already been demonstrated that consumer input on the operational level is inadequate in the one facility in which it exists and totally absent in all four communities.

Exhibit No. 6--Continued

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setting up mechanisms for mutual feedback between the consumer set on the operational level and the consumer set on the policy and planning levels. Indian people have been categorically denied any input into their own health care system until recent years. Approximately two years ago, IHS decided to adopt the policy of community control or community involvement. The concept was well received by the Indian people--this study shows that Indian people want and believe they have a right to a voice in their health care system. However, the data strongly indicates that IHS has failed to provide the technical assistance necessary to implement this concept. There is consumer input on the policy and planning level--in the form of the Area Indian Health Advisory Board. There is no consumer input on the operational level--less than half of the deliverers knew enough about the Board to discuss their function and purpose (see subproblem 4). There is no mechanism for mutual feedback between the consumer set on the operational level and the consumer set on the planning and policy levels--i.e., the community members and the members of the Area Advisory Board.

Data show that the success of the CHR program depends on the individual CHR. There were only two communities in which there was a great amount of consumer dissatisfaction with the CHR program. Stated reasons for dissatisfaction fell into two major categories. These categories are as follows: (1) Respondents stated that CHRs provided services only for older members of the community. It was stated that older people needed the services but, that additional services were also needed by other members of the community; (2) That the CHRs tended

to provide services mainly to members of their families and extended families.

Data show that the Mental Health Coordinators are less well recognized by the communities than are the CHRs. This could be due to the fact that the Mental Health Coordinators have not been functioning within the communities as long as the CHRs. Another contributing factor may be that a smaller segment of the community is need of the services offered by the Mental Health Coordinator than those offered by the CHR. Since two communities have a much higher percent of individuals knowing and liking the Mental Health Coordinator, it is concluded that the success of the MHC program depends largely on the individuals filling the role.

Bernalillo County Medical Center.

Ten consumers were interviewed in the clinic at Bernalillo County Medical Center (BCMC). BCMC is utilized by IHS as a contract facility. For this discussion, the researchers have also included information collected from interviews with consumers whose interviews focused primarily on other facilities, but who were also consumers of BCMC's health services. Consumer dissatisfaction with BCMC was extensive. Reported areas of dissatisfaction were as follows:

- (1) Long periods of waiting to be seen by the physician.

A major contributing factor here is the notion that Indians wait longer than non-Indians. The hospital records do not support this belief of the Indian patients. The following example is one reason why the records do not show an accurate account of how long Indian people wait. An Indian lady brought her son, who had been bitten by a dog, to the emergency room. She arrived at 10:00 a.m. and was told by the clerk

Exhibit No. 6—Continued

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to be seated. At 1:00 p.m. the woman was called by the clerk so the clerk could fill out the necessary forms so the woman's son could receive care. At 2:00 p.m. one of the researchers approached an RN on duty stating that the woman and her son had been waiting since 10:00 a.m. and that the boy was looking more ill. The RN emphatically questioned the creditability of the researcher's observation--"In our clinic?, In our clinic?" The RN then looked at the clerk's record and stated that the patient had arrived at 1:00 p.m. The Indian woman and son were finally seen at 2:30 p.m.

- (2) Being treated with indifference.
- (3) Being rushed through the clinic.
- (4) Being treated by untrained physicians.
- (5) Being used as specimens for the learning benefit of Medical Students.

Many of these complaints are the same as for any patient receiving care at an institution which has as its primary function teaching medicine rather than delivering health care. In this regard Sol Levine quotes Bristlow:

The social attitudes of the Health professionals reflect too frequently the notion still prevalent among medical teachers and administrators that the poor who obtain their care in public, especially teaching, institutions are 'clinical material'. The latter expression, and the tone in which it is usually uttered, betrays an attitude toward people which is destructive of that mutual respect which is necessary for good medical care. The long wait in uncomfortable surroundings, after a difficult trip, to receive care which is too brief, from a hurried doctor who is frustrated with the knowledge that he can make only a fragmented contribution and whose attitude says 'clinical material'--these aspects of care to those

most in need of care have left deep scars:⁹

This is the social environment into which the Indian consumer is thrust. The environment which he has just left is one in which there are close family ties extending and overlapping into a close knit community of family and friends where cooperation and caring takes precedence over competition and interpersonal indifference. It is impossible for the Indian patient to fit into such a health system, and to be treated-- as bad as it is--"just like everyone else". The Indian patient, since he is an Indian, has another problem superimposed on top of those encountered by the non-Indian consumer at BCMC. The Indian consumer is different from the deliverer, he is in fact different from the usual consumer that the deliverer has grown accustomed to. Therefore, the Indian patient will be treated differently. In his discussion of "The Collective Preconscious and Racism", Morales quotes Giddings concerning how difference in racial groups promotes difference in treatment.

Within racial lines the consciousness of kind underlies the more definite ethnical and political groupings, it is the basis of class distinctions, of enumerable forms of alliance, of rules of intercourse, and of peculiarities of society. Our conduct towards those whom we feel to be most like ourselves is instinctively and rationally different from our conduct towards others, whom we believe to be less like ourselves.¹⁰

⁹ Sol Levine, "Unravelling Technology and Culture in Public Health", p. 238.

¹⁰ Amando Morales, "The Collective Preconscious and Racism," Social Case Work (May 1971), p. 287.

Exhibit No. 6—Continued

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BCMC is a teaching institution and as such tends to treat patients as 'clinical material': the effects upon the Indian patients are conceivably much more devastating due to the shock of going from a more humanistic culture to one which is automated and depersonalizing: the negative experience is compounded by the fact that Indian people look and act differently than the deliverer and will be, therefore, treated differently.

Interviews of deliverers showed that BCMC personnel had much less knowledge and understanding of Indian people than did IHS personnel. One technician stated that, "You know, I don't know a thing about Indians. Oh, I've seen them come in the clinic, but that's about it". It is not unusual for these deliverers to categorize Indian patients with those patients getting free care and that these people are getting something for nothing and somehow at the expense of the deliverer speaking. Generally, the BCMC staff seemed to have less of an investment in the delivery of health care to Indian people than did the IHS staff. Two of the deliverers of BCMC refused to take part in this study. Of the total sample, these are the only two refusals. From the above discussion, it is concluded that health care can best be provided to Indian people by a system specifically designed to that end.

The majority of consumers interviewed stated that BCMC has been used as a means to terminate the obligation which the Federal Government has to provide health care services for Indian People living in the Albuquerque Area. In years before 1951, there was an Indian

Health Hospital in the northwest part of Albuquerque. This hospital provided health care for all Indian people in the Albuquerque area. The Indian people were informed that a new facility was to be built with Indian Health Service money. This facility would provide the health care previously provided by the IHS hospital and the name of the new facility would be the Bernalillo County Indian Hospital. There was to be one complete floor reserved for Indian people. In time the Indians were told that the new facility would only serve the Pueblos. The number of beds reserved for the Indian people slowly dwindled from a floor to 30 hospital beds. The name was eventually changed from Bernalillo County Indian Hospital to Bernalillo County Medical Center. It is the general consensus of opinion among those Indian people interviewed that various factions of the majority culture worked in collusion to build a new facility in which to educate some members of the majority culture and to provide health care to some other members of the majority culture. The facility displaced one which provided care to all the Indian people, the facility was built with Indian money and on Indian land, yet, BCMC provides second class care to only one segment of the Indian population.

The scope of this study did not allow for a full investigation into the historic records and progression of BCMC. The findings of this study are sufficiently strong to call for a full investigation of the original contract between BCMC, IHS and the Indian consumer. Investigation is also needed to determine the amount of money expended by IHS for those services received by Indian patients.

Additional Findings

One additional finding was relevant to Subproblem 2. The researchers had not originally included questions specifically relating

Exhibit No. 6—Continued

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to Public Health Nurses. It became immediately apparent, through the first few interviews with consumers, that there was a great amount of dissatisfaction concerning the small number of home visits made by Public Health Nurses (PHNs). Only 30 percent of the consumers interviewed stated that they themselves had had home visits from the PHN or were personally aware of other community members who had received home visits. The extent of consumer satisfaction varied from community to community. One community had as high as 60 percent of the consumers stating that either they or some one they knew were visited by the PHN. Another community had as low as 0 percent stating that as far as they knew, the PHN did not make home visits. This data indicates that IHS has no means of accountability. That the deliverers are accountable to no one in IHS or the community in the performance or lack of performance of their duties.

Another additional finding was relevant to subproblem 1. Specifically, the reaction of deliverers to community involvement and to subproblem 3 concerning cross-cultural incongruence. Forty-four percent of the physicians made statements during indepth interviewing which clustered into a discernable pattern.* From this pattern a specific typology has been formed. These four physicians were interviewed in three different communities and in one facility located

*Other deliverers may have made one or two statements similar to the pattern of statements from which the typology was drawn. However, one or two such random statements do not constitute a pattern and were not considered as such.

Exhibit No. 6—Continued

in an urban area. The responses of the consumers concerning these four physicians also followed a discernable pattern. This "type" of deliverer is more likely than are his colleagues to make statement of the following nature:

(1) Express fear of someone telling them how to practice medicine. This fear seems out of proportion with the objective possibility that someone will tell them how to practice medicine. This fear affects how the physicians perceive some of the patients' verbalizations and how they tend to react to these verbalizations. These physicians tend to perceive a patient's request for penicillin, for example, as an attack, and to tell him how to practice medicine. He then acts in a defensive manner, sometimes becoming verbally aggressive and derogatory. One physician is reported to respond with--"Well, what gauge needle do you want? A 22 or 18 gauge?". There is no way a physician would give such a response to a private, fee for service patient.

(2) Express fear of "being reported".

(3) Express fear of "getting in trouble".

(4) Make statements denying the cultural differences between Indian people and themselves. The following statements are to be expected:

Question: What do Indians value?

Answer: Oh, the same things we do.

Question: What are the differences in treating Indians as opposed to non-Indians?

Answer: None. Indians are just like anyone else. I treat everyone the same.

Answer: The only differences are the same ones encountered in any low socio-economic group.

Answer: Indians want a White culture and an Indian heritage. Nowadays, Indians are just like us. They have a different past--that's all.

Question: What do you think of Medicine Men?

Answer: The Indians don't go to them anymore. If they do, it's only the older ones.

This type of physician is likely to equate IHS with socialized medicine or social welfare which they feel to be undesirable. These deliverers are likely to express feelings of frustration and anger at having to "treat minor illnesses such as bad colds". They are apt to believe that Indian people "over use" both the physicians and the clinics and that if the Indian had to pay for these services, he would not "over use" them. One PHN observed that Indian people do not know how or when to seek medical care and do frequently come to clinic for bad colds. However, unlike the type of deliverer being described, the PHN did not see the problem as a result of "free" health care but as a lack of health teaching. These physicians are also more likely than their colleagues to make value judgements concerning their patients and the patients' life styles. These physicians, while discussing Indian people, tend to devote more time, than their colleagues, to talking about what they have observed to be negative characteristics of that people. It is not unusual for these physicians to talk about alcohol misuse of money, low level of education, sporadic employment, and misuse of health personnel and facilities. They tend to see these problems as undesirable behavior by a large number of individual Indian people and that these individuals should change this type of behavior or somehow be forced to change. It is interesting to note that these are intelligent men; they must have been exposed, somewhere in their long period of formal education, to the basic principles of social science; yet they fail to see these social problems as symptoms of a diseased social system of which the Indian people are victims. It is possible that the physi-

cian himself is also a victim of the same diseased social system which has dulled his sensibilities and leaves him less capable to utilize his intelligence and to apply his knowledge when dealing with individuals who are socially and culturally different than himself.

The patients of these physicians are likely to be dissatisfied with both the doctor-patient relationship and the medical treatment they receive. There were more consumer statements, directed toward these physicians than toward other deliverers, to the effect that the doctor treats them as socially inferior. It can be expected to hear many statements similar to the following: "He acts like he can't wait to get rid of you." "He acts like he doesn't believe you when you tell him what's wrong with you", (describe symptoms). This group of consumers are likely to be dissatisfied with the medical treatment they receive. These consumers are likely to state that, "No matter what's wrong with you, he always gives you aspirin and cough syrup." There are many more incidents reported by this consumer group to the effect that: (1) patients have gone to IHS, (2) the doctor either said nothing was wrong or gave inadequate treatment, (3) the patient sought and received other medical treatment, and (4) the physician "became angry" and sometimes refused to pay contract funds and/or sometimes threatened to refuse health services in the future. In one community, there were several instances reported in which the physician became "angry" when patients used medicaid or medicare.

This data indicates that health professionals who are unable to make adequate cultural adjustments will have difficulty with the relationships with the Indian patient and will also be hindered in his diagnosis and treatment. This interpretation is supported by statements of both consumers and deliverers who have come into contact with this type of deliverer. This supports the researchers' theoretical model that some health professionals will have difficulty recognizing and dealing with the value system, biases, and life style of their own culture as they collide with the Indian patients' culture. These professionals will be limited in their ability to function effectively.*

Findings and Interpretations Relevant
to the Process of Data Collection

The researchers found that having a community member accompany the researchers was necessary to the data collection process. Each community member who accompanied the researchers were recognized by the community as having an officially designated position within the tribal system or community. These members consisted of a community worker, a caseworker and a tribal employee. There was one community in which no community member accompanied the researchers. In this area, data collection was slow and tedious and than was made possible (given a reasonable length of time) only by the fact that the researchers were personally known by some community members and the researchers themselves were Indian. Those who accompanied the researchers served

*See Chapter 2--Review of the Literature.

as interpreters and provided entrance into the community. It is possible that the researchers would have otherwise been viewed as intruders and outsiders with no real right or reason to be asking questions and taking notes.

There were only two areas in which consumer interviews were conducted within the clinic.* In these two areas, a greater percent of consumers stated satisfaction with IHS than those conducted outside the clinic. This could be due to: (1) Those people who are satisfied with the services are more likely to seek the services offered and therefore be in the clinic, and (2) The respondents may have been reluctant to state dissatisfaction out of fear of being overheard by the personnel and later suffering retaliation.

The researchers' found that the data collection process-in depth interviews had several positive effects within the deliverer group: (1) Many deliverers stated that this was the first time anyone had asked their opinion of IHS and that it gave them a sense of participation in that someone was interested in what they had to say and thought that they had something to offer; and (2) Several of the health professionals stated that the questions lead them to think about aspects of health care delivery that they had not previously considered. This is strong indication that IHS is not providing their health professionals the opportunity to participate in the overall direction of IHS.

*These two areas were BCMC and Claremore Indian Hospital (Pilot Study).

Conclusions

The following conclusions apply to the sample of sixty consumers and thirty-four deliverers used in this study.* Since the sample was a large one and the methods of data collection was indepth interviews, generalizations can be made to the entire Albuquerque Area of Indian Health.

(1) The extent of deliverer satisfaction is low-based on their own perceptions. The major area of dissatisfaction is with the hierarchy and bureaucratic system within IHS. Dissatisfaction with facilities, financing and the supply of staff is also influential. These are areas over which the deliverer has no control.

(2) The extent of consumer satisfaction with the delivery of health care services is low. The major area of dissatisfaction of the consumer is in those areas over which the deliverer has control.** This shows a lack of consumer participation in those areas over which the deliverer set on the operational (Service Unit) level are in control. IHS has adopted the philosophy and concept but has not implemented the practice of community involvement.

(3) The value incongruencies that exist in IHS are not being adequately dealt with. Only 24 percent of the consumers stated that IHS personnel understood and respected the Indian way of life.

*Sample also included nine high-status informants.

**Specifically, these are the use of technical terms by the staff, interest of staff, etc. See Table 2.

Knowledge and understanding of Indian people by the deliverers interviewed is less than what could be expected of health professionals working within Indian communities.

(4) Presently, the professionals are not delegating the responsibilities of health to members of the Indian community. All of the deliverers interviewed stated that they were in favor of the concept of community involvement. Only 12 percent stated that presently Indian people truly had any input into the Indian health care system. Approximately, only 37 percent of the deliverers interviewed knew enough about the Indian Health Advisory Board to discuss its functions and purposes. IHS has not provided the education, training and counseling necessary for the deliverer to fill his role in community involvement.

(5) In those areas in which IHS has "allowed" community involvement, the Indian people are accepting the concurrent responsibility. This is only on the Area level. However, IHS has not worked with the communities to provide input at the Service Unit Level. Furthermore, there is an absence of mechanisms for mutual feedback between the consumer set on the operational level and the consumer set on the Area level. The administration of IHS—who supposedly hold expertise in bringing about community involvement cannot claim failure on the part of the Indian people if they have not made the expertise available.

(6) IHS facilities are preferred to contract facilities for the delivery of health care services to the Indian people. The deliverers in general health facilities have neither the time nor inclina-

tion to gain the knowledge and understanding necessary to work with Indian people who are culturally and socially different from themselves.

Summary

The findings and interpretations in relation to the five subproblems under consideration in this study were presented in this chapter. The findings and interpretations relevant to the data collection process were also presented.

CHAPTER V

IMPLICATIONS FOR PRACTICE AND RESEARCH

Introduction

The implications for practice and the implications for future research are presented in this chapter.

Implications for Practice

The administrators of IHS should work with the deliverers and consumers to set up mechanisms for mutual feedback. These feedback mechanisms should be established between all sub-systems. Presently, there are feedback mechanisms operative between the Area Office and the main office and between the Area Office and the consumer on the planning and policy level (Area Advisory Board). There are no mechanisms for feedback presently operative between the Area Office and service units, the consumer and deliverer on the service unit level and* the consumer set on the operational level (community members), and the consumer set on the planning and policy setting level (Area Advisory Board). In order to establish feedback mechanisms, lines of communication already existent should be utilized, strengthened, and expanded. Community Health Representatives, Mental Health Coordinators,

*The only exception to this is the consumer and deliverer groups for a facility located in one of the two urban settings. Although the feedback mechanism is existent, there is confusion on the parts of both the consumer and the deliverer as to role functions, when various decisions are to be discussed and what types of decisions are to be made by which group.

Caseworkers, and community workers of all types could be a major vehicle for communication between the consumer set on the operational and the consumer set on the planning and policy level. These community workers, who are in constant day-to-day contact with the consumer (patients), would receive information from the community members as to what was going on in the delivery of health care of both a positive and negative nature. Findings indicate that this type of relationship is presently functioning. The community workers would inform the consumer as to who and what the Service Unit Advisory Board was and tell the consumer that their complaints should be called to the attention of the board either by the worker or the consumer himself. The community workers would also have a standardized form or questionnaire indicating areas of dissatisfaction.* The community workers would then periodically meet with the Service Unit Advisory Board to discuss the problematic areas reported by the consumer and appropriate actions to be taken; and, the community worker would then give continuous feedback to the community concerning the action taken on problems.

The Service Unit Advisory Board would periodically meet with the deliverers of health care to discuss situations which the consumers find problematic (positive feedback would also be given to the deliverers at this time) and which the deliverers find problematic.**

*This would cut down on the "hit or miss" type of consumer participation and also decrease the blame placing quality of criticism.

**The community workers could also be present at these meetings with the deliverers.

Exhibit No. 6—Continued

The Service Unit Advisory Board could then communicate the results of these meetings to the community workers and also to the Area level Advisory Board. At the Area Advisory Board level, major issues of concern unique to the various service units could be discussed--if they had not been solved on the Service Unit level. Also issues of concern which were common to all Service Units could be discussed. Given this type of feedback network, the Area level Advisory Board would have more input from the consumer. The Area level Advisory Board would also be free of some of the Service Unit problems and therefore able to devote more time and energy to the overall functioning of IHS. The consumer set on the operational level would be more involved in IHS-input and feedback. Below is a schematic drawing showing the subsystems discussed and the proposed mechanisms for mutual feedback.

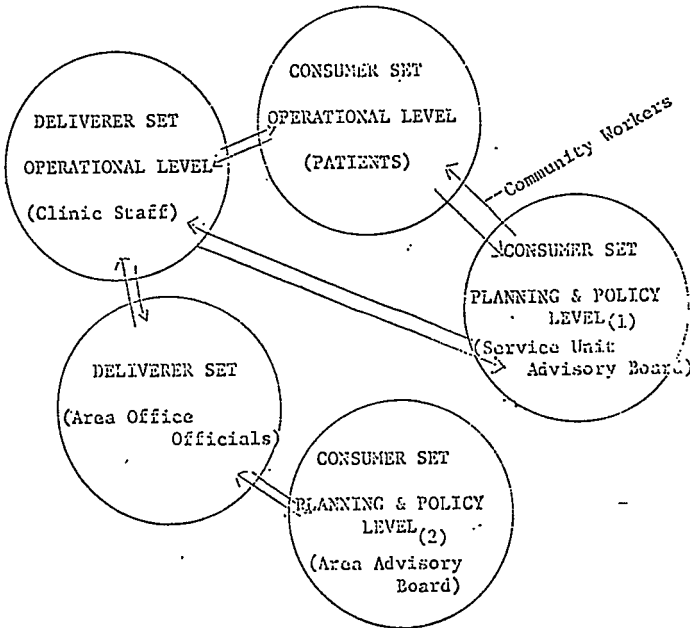


Exhibit No. 6—Continued

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Consumer involvement is a part of IHS only in philosophy. This philosophy has filtered down only to the Area Office level. In order to make community involvement a functional part of IHS on all levels, IHS should provide the deliverer and the consumer with the information and training necessary to fill their responsibilities in community involvement. Vehicles for learning shall include orientation, workshops, sensitivity groups and counseling.*

Findings strongly indicate that nurses holding the position of a PHN on the Service Unit level are not educationally qualified to do so: that PHN are not making home visits, that there is no means for accountability for PHN's and that IHS staff are not fully cognizant of what the Masters level PHN is qualified to do or how her expertise should be utilized. IHS should conduct a full and indepth evaluation of the Department of Public Health Nursing. The evaluation team should be headed by the Director of the Public Health Nursing Department, an outside Nurse Consultant and an Advisory Board member.

IHS should conduct a full investigation into the Bernalillo County Medical Center regarding the contract with IHS and the responsibility of IHS to provide health care to the Indian people in the Albuquerque Area.

Implication and Recommendations
for Future Research

The following implications and recommendations were based on

*Inherent in the concept of counseling is that the counselor be qualified.

the findings from the present study conducted by the researchers.

(1) Of those physicians interviewed, 44 percent gave responses which fell into a definite pattern (See Chapter IV). The patients of these physicians were less likely to state satisfaction with the services provided by those physicians than patients of other physicians. A study shall be conducted to further delineate such patterns among health professionals working in Indian communities. Extensive background information of the subjects should be gathered in order to correlate easily, psycho-cultured experiences with later behavior.

(2) Traditionally, attention has been focused on the consumer's culture when looking for barriers to the delivery of health care in a cross-cultural setting. This type of approach presumes that there is something "wrong" with the consumer's culture. This type of approach does not provide for research or examination of the health professionals' culture and therefore, excludes from consideration and remedy barrier to health care delivery produced by the professionals' culture. Furthermore, investigation or research into cross-cultural settings have been done predominantly by health professionals which are themselves products of the White Anglo-Saxon Middle-Class culture. These health professionals tend to observe and interpret findings from the only point of reference they know--White Anglo-Saxon Middle-Class. This produces a one-sided and narrow knowledge pile.

Studies into cross-cultural setting should be conducted which focus on the deliverers culture as well as the culture of the consumer. Such studies should be conducted by health professionals

who received primary acculturation in the Indian communities as well as by health professionals acculturated in the White Anglo-Saxon Middle-Class Society.

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Exhibit No. 6—Continued

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APPENDIX A

RESULTS OF PILOT STUDY

INTRODUCTION

Prior to carrying out the major investigation, a pilot study was conducted to pretest the questionnaire, to determine the length of time needed for interviewing subjects, to check clarity of questions and to refine the approach of interviewing techniques for both sample populations.¹

In preparation for the pilot study, the Oklahoma Area Office was contacted. The researchers had a conference on June 28, 1971, with the Area Director, the Assistant Area Director, the Deputy Director, and the Chief of the Office of Program Planning and Evaluation. The following were also consulted:

- The Chief of Nursing Service Branch
- The Chief of Mental Health Services Branch
- The Chief of Medical Services Branch
- The Public Information Specialist
- The Training Officer

The President of the Oklahoma City Area Indian Health Service Advisory Board, the Vice-President and the Secretary of the Claremore Indian Hospital Board of Directors² were also contacted. The study was discussed with aforementioned President and Vice-Chairman, who gave the researchers positive feedback regarding the study and offered the researchers further areas of

¹Consumers and Deliverers of health care services.

²Advisory Board of Claremore Service Unit is named the Claremore Indian Hospital Board of Directors.

research. Due to conflict in the schedules of the researchers and the Secretary, a personal interview with the Secretary of the Board was inobtainable. However, the Secretary of the Board was contacted by phone.

METHODOLOGY

SAMPLE:

The sample population for the pilot study included six deliverers and seventeen consumers of health care services in the clinic at the Claremore Service Unit.³ The sample of deliverers⁴ was made up of one registered nurse,⁵ two licensed practical nurses and three medical doctors. S_d included male and female in the age range of 27 years to 50 years. S_c included both male and female in the age range of 19 years to 69 years.

PILOT QUESTIONNAIRE:

Two questionnaires were devised and used as a guide for interviews.⁶ The questionnaire for the consumer (C₁) and the questionnaire for the deliverer (D₁) were designed (1) to elicit information focused on the same possible problematic areas, but from the viewpoint of the

³See background information at the end of Appendix A--Results of Pilot Study.

⁴Hereafter to be referred to as S_d.

⁵One was on vacation.

⁶See Appendix B.

respective sample population, and (2) to elicit information focused on possible problematic areas specific to each sample population.

An example of the two is as follows:

C₁. Satisfaction of Consumer

- a. Do nurses and physicians spend as much time with you as you feel they should?
- b. Do the nurses and physicians really listen to you?

D₁. Satisfaction of Deliverer

- a. Are you able to practice your profession to the utmost of your capabilities while working in the Indian Health Service?
- b. Are you hindered by the Indian Health hierarchy or the Indian community?

An example of (1) above is as follows:

C₁. Community involvement

- a. Do you feel that you have a say in the policy or management of Indian Health Service?
- b. What do you think about the Indian Advisory Board?

D₁. Community Involvement

- a. Do you think there is involvement on the part of the Indian community in health care? (Too much - too little?)
- b. What do you think of the Indian Advisory Board?

These questionnaires were used to guide the researchers while interviewing; and yet, not to limit or to restrict the subjects in their discussions of areas not previously considered by the researchers.

DATA COLLECTOIN:

Using the questionnaire as a guide, each of the two researchers interviewed one subject at a time. Each interview took from 45 to 60 minutes. The questions were open, so that each subject was encouraged to freely express his thoughts and feelings. Each subject was assured of confidentiality. The subjects were further told that the information may be helpful in bringing about changes in the Indian Health Service which would be beneficial to them and which could stem from their participation.

Verbatim notes were taken. The subjects were told that what they had to say was important and that the researcher was using notes to help remember what was said and to aid her in making comparisons with what other participants had to say. Most subjects seemed willing and sometimes eager to participate in discussing both the "good" and "bad" points of the Indian Health Service.⁷

ANALYSIS OF DATA:

The data was analyzed by the researchers who looked for (1) areas of match or mismatch between the (a) consumer and deliverer; (b) Indian and non-Indian deliverers; (2) problematic areas of common concern; and (3) problematic areas not previously considered.

The researchers utilized a consultant⁸ to re-evaluate the

⁷See Results.

⁸Shirley Smoyak, R.N., Ph.D.

research design, to refine the research tool,⁹ and to discuss collection and analysis of final data.

RESULTS

The findings and interpretations of the data for each of the five sub-problems discussed in Part I are presented in this part. Additional findings and interpretations based on the data are also presented.

Subproblem 1

What is the degree of satisfaction of the deliverers of health care services based on their own perceptions?

According to all subjects, the greatest cause of dissatisfaction was attributed to the extremely imbalanced ratio of personnel to patient.¹⁰ In conjunction with the large number of patients, is the lack of examining rooms. All professionals acknowledged feelings of frustration and inadequacy resulting from the combination of too many patients, too few personnel, and too little facilities. Lack of facilities is not only limited to too few examining rooms. There also, are too few medicines, in both variety and number.¹¹ The philosophy of "penny wise and dollar foolish", is prevalent. More money

⁹The questionnaire for the major area of research will be included in the final report.

¹⁰Physicians see some 80 to 100 patients per day: 1:80 to 1:100.

¹¹There have been times when vital medicine, e.g., digitalis and dialintin have been completely depleted with no funds to purchase more.

Exhibit No. 6—Continued

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is spent sending enzyme tests out of the clinic, than would be spent in buying a machine.¹²

The other areas of dissatisfaction are centered around the hierarchy within the Indian Health Service. The subjects specifically stated:

The hierarchy does not care about the clinics and has forgotten that the field clinics exist, as evidenced by the lack of equipment and personnel.

Also, that there were too many restrictions on medical judgment: At times, the staff has been told they could not do surgery and they could not send patients to larger contract hospitals, even when it was medically called for.

An that, the establishment of Nursing clinics would be hindered by the Nurse's reluctance to accept her expanding role in the delivery of health care.

The subjects stated that the patients were cooperative and willing to follow medical advice.¹³ There was difficulty in following directions when the patients did not clearly understand directions, but the staff stated that the difficulty could be overcome with effort and time. All subjects stated there were few hostile or uncooperative patients.

¹²Furthermore, it takes two weeks for the results of enzyme tests to be returned, which then renders them of minimal value; i.e., the diagnosis and treatment of myocardial infarctions and acute liver damage with bleeding esophageal varices.

¹³See additional findings.

Sub-problem 2

What is the degree of satisfaction of the consumers of health care services based on their own perceptions?

There is a match between the consumer and the deliverer in the area of major cause of dissatisfaction. One-hundred percent of the consumers stated the primary cause of dissatisfaction was having to wait for long periods of time to be seen by a physician in the clinic.¹⁴

The majority of the patients reported that the nurses and physicians spend enough time with them;¹⁵ they listen and are listened to; and that the nurse and physicians seem interested in them. The majority of the patients denied that the staff used technical terms that the patient could not understand.

The majority of the patients stated that the convenience of facilities are adequate and are improving; i.e., bathrooms, coffee shop and drinking fountains. Furthermore, diabetics coming into the clinic for urine analysis and blood sugars are provided with breakfast. Three subjects stated that the new beneficial refill policy at the pharmacy was beneficial, because it reduced waiting time in the clinic and made it possible "not to have to see the doctor each time." However, the fact that sometimes the pharmacy runs out of medication was mentioned three times.

¹⁴Some patients had to wait all day after driving 60 or more miles and then drive home again. Some patients ride buses or rely on rides with friends or family.

¹⁵This is not, however, the professional opinion of the staff themselves.

Sub-problem 3

How are the value incongruencies that exist in a cross-cultural system dealt with?

For the most part, the deliverers of health care realize that there are cross-cultural differences. However, this awareness seems to be more a general knowledge of the "poverty class", than specific knowledge of Indian culture. The nursing personnel seem more sophisticated in the area of cultural differences specific to Indians, than do the medical personnel. This difference is not overtly perceptible to the consumer. The majority of consumers reported no difference in their interpersonal relations when comparing physicians and nurses. Both patients and nurses report having esteem for and knowledge of the Indian Doctor's¹⁶ effectiveness. Conversely, the physicians view the Medicine Man either as ineffective or at times harmful. This may account for the patient's reluctance in mentioning his visits to the Medicine Man to the physician.¹⁷

The majority of the patients report no difference in interpersonal relationships when comparing Indian professionals and non-Indian professionals. There were two patients who preferred Indian professionals and two patients who preferred non-Indian professionals.

Sub-problem 4

To what extent are the health professionals delegating responsi-

¹⁶Also known as Medicine Man.

¹⁷Physicians claim only second-hand information concerning his patients' consultations with the Medicine Man. They stated, "we usually only hear about it from the nurses or from some relative of the patient."

bilities of health care to members of the Indian community?

All of the professionals are in agreement with the general concept of community involvement. All were familiar with the Advisory Board. The range of knowledge concerning the Board's functions was wide. One professional had only recently heard that a Board existed; and another had attended one Board meeting. Most of the professionals doubted if the Board "represented" the grass-root Indian. Furthermore, the majority of professionals felt as though there should be more of a two-way line of communication between the Advisory Board and themselves.¹⁸ The professionals stated that neither they nor their ideas were welcomed by the Board. Since interpersonal relationships involve at least two persons,¹⁹ the positive or negative approach by the professionals must be considered, as well as, the reception and responses by the Board. In fact, one influences the other and, in return, is influenced by it. It is possible that the professional is accustomed to being the expert in areas of disease and health; and expects his expertise to carry the same status in other areas of policy making. The role adjustment of not being received as the expert may account for feelings of low-esteem. It is, also, possible that similar elements of role adjustment may be playing a part in the behavior of Board members. When individuals

¹⁸The researchers wonder who should make the overtures to establish and to maintain this two-way line of communication.

¹⁹In this instance, two sub-systems.

are unaccustomed to positions of authority and power, and are suddenly given authority and power, it is not unusual to find over-use, under-use, and even, misuse of that power, until they grow accustomed to exercising power at the right time, in the right place and in the right amount.

Sub-problem 5

To what extent are the Indian communities accepting responsibility of community control and decision-making?

Most of the deliverers and consumers were aware of the Community Health Representatives. The majority of subjects from both sample groups reported having positive working relationships with the Community Health Representatives. Seven subjects stated that the Community Health Representatives were misused and that "they are used as taxi car drivers." It is not that transportation is not needed, but rather that these highly trained personnel could be used in other areas that has caused these accusations of misuse of the Community Health Representatives. However, at least two Community Health Representatives use the time spent in travel for health teaching and as informed liasons between the Indian Health Service and the members of the community.²⁰

Out of the 17 patients interviewed, only one was aware of the Advisory Board. This data is inconsistant with the idea that the

²⁰Any organization needs to establish lines of communication. Otherwise, misinformation will travel back and forth in a misformed grapevine, and will be a major source of misunderstanding which can result in confusion, mutual mistrusts, and low morale.

Exhibit No. 6—Continued

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the Advisory Board is "representative" of the grassroot Indian. It is possible that lines of communication have not, at this time, been established between the Board and the community.²²

ADDITIONAL FINDINGS

There is a large difference in the number of grassroot Indian people who are working with the Community Health Representatives, as compared to the number of grassroot Indian peoples who have knowledge of the existence of the Advisory Board. One possible reason for this difference is that many of the Advisory Board members are appointed by their Chiefs.²² Some subjects and expert informants reported that many Indian people view membership on the Advisory Board as a status symbol, and a Community Health Representative position as one of service. Also, due to the set activities of each group, the Community Health Representatives have more direct contact with the Indian people, than do the Advisory Board members.

SUMMARY

The findings and interpretations in relation to the five sub-problems under consideration in this study were presented in this part. The findings and interpretations relevant to the data collection process were also presented.

²¹Communication lines between all Indians of one tribe would be particularly difficult; in Oklahoma, Indians are dispersed throughout the non-Indian population and spread over the entire state.

²²The Chiefs, themselves, may or may not be representative of those Indians who utilize the Indian Health Service.

Background Information

The following Table No. 1 shows the spread of socio-economic status, sex, age and years in Indian Health Service of subjects in the sample population of deliverers of health care services.

Table No. 2 shows the spread of socio-economic status, sex, age and tribe of subjects in the sample population of consumers of health care services.

TABLE I
 BACKGROUND INFORMATION
 DELIVERERS OF HEALTH CARE

Title	RN	LPN ₁	LPN ₂	MD ₁	MD ₂	MD ₃
SEX	F	F	F	M	M	M
AGE	51	50	40	27	33	28
INDIAN/NON-INDIAN	W	I	I	W	W	W
YEARS OF SERVICE	3	22	4	1	1	1
G.S.	8	4	4	--	--	--
EDUCATION	3 yrs.	1yr. 3mos.	1yr 3mos	MD	MD	MD
INCOME	\$9,000	\$13,000	\$5,160	\$30,000	\$18,000	\$12,000
RESIDENCE*	O.H.	O.H.	O.H.	O.H.	O.H.	O.H.

*O.H. (Own Home).

TABLE 2
BACKGROUND INFORMATION
CONSUMERS OF HEALTH CARE

TRIBE	CHER.	CHER	CHER.	CHER.	CHER.	CHER.	CHER.	KIOWA	CREEK
SEX	M	M	M	F	F	F	F	F	M
AGE	69	19	48	38	36	21	40	21	54
EDUCATION	8th	HS+1	8th	10+NA	11 1/2	12	8th	HS+1	7th
INCOME	S.S.	\$2,000	\$3,000	\$3,000	\$4,800	----	\$3,000	----	----
RESIDENCE	O.H.	APT.	O.H.	O.H.	O.H.	O.H.	O.H.	APT.	O.H.

TRIBE	CREEK	KAW	SHAW	WHITE	SAC
SEX	M	F	F	F	M
AGE	23	33	25	49	28
EDUCATION	HS	10th	HS	HS	10+6mo.
INCOME	\$2,000	\$5,400	\$6,000	----	\$6,000
RESIDENCE	APT.	O.H.	RH	O.H.	RH

CHER. = CHEROKEE
SHAW = SHAWNEE
SAC. = SAC & FOX

O.H. = OWN HOME
APT. = APARTMENT
RH = RENT HOME

S.S. = SOCIAL SECURITY
F = FEMALE
M = MALE

APPENDIX B

Pilot Study Questionnaires

Pilot study questionnaire D₁ was designed as a guide for interviewing subjects in the pilot study sample population of the deliverers of health care services.

Pilot study questionnaire C₁ was designed as a guide for interviewing subjects in the pilot study sample population of the consumers of health care services.

The questionnaires designed for the major research study will be included in the final report.

PILOT STUDY QUESTIONNAIRE D₁
Claremore, Oklahoma - July 2, 1971.

INTRODUCTION:

I am Rosemary Williams/Janice Kekahbah. I am interested in your thoughts and feelings concerning the care being given by Indian Health Service. Its good points, its bad points and any suggestions you may have for improvement.

I will not use names; and any information will be confidential. The information that you give me will become a part of a larger study. The information will be used by Indian Health Service and the Indian people in bringing about any necessary changes and improvements in the overall system.

QUESTIONNAIRE D₁

I. Background Information:

A. Age:

B. Education:

1. Degree
2. Special Training

C. Present Position:

1. Title
2. G.S. Level
3. Years in IHS
4. Career or Other
5. Reason for Working in IHS
6. Total Number of Years in Profession

D. Current Family:

1. Marital Status
2. Indian or non-Indian Spouse
3. Children
4. Family Income
5. Place of Residence

E. Family of Origin:

1. Education
 - a) Mother
 - b) Father
2. Income
 - a) Mother
 - b) Father
3. Place of Residence
4. Nationality
 - a) Mother
 - b) Father

II. Satisfaction of the Deliverer of Health Care Services:

A. Are you able to practice your profession to the utmost of your capabilities working in IHS?

B. Are you hindered by the hierarchy of IHS system?

C. Physical Conditions:

1. Equipment
2. Number and ability of other professionals.

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copy provided to Commission.)

D. Indian Patients

1. Communications
 - a) English
 - b) Terminology
2. Willingness to describe present system
3. Cooperation
 - a) During diagnosis and treatment

III. How are the value incongruencies existing in a cross-cultural system dealt with?

- A. What are the differences in treating Indians as opposed to non-Indians?
1. Since you come from a non-Indian background and the patient from an Indian background, do you recognize cultural differences in attitude, values and life style?
 2. What are your thoughts and feelings about medicine men?
 3. Are Indian peoples' dietary habits different from the usual non-Indian?
 - a) Does this pertain to all or most?
 - b) If you had to put value on it, is it good or bad?
 - c) If an Indian came in with red swollen gums, what would you do?
 - 1) Vitamins
 - 2) Culture
 - 3) Hygiene:
 4. Do Indians put as much emphasis and effort into hygiene and cleanliness as do non-Indians?
 - a) Is this good or bad?
 - b) In what way?
 5. Are Indians as industrious as non-Indians?
 - a) Motivated toward productive activity?
 - b) Drive and stamina in goal achievement?
- B. On what have you based your previous answers?
1. Personal contact:

a) professional	c) family
b) friends	d) acquaintances
 2. TV, radio, books, movies, etc.
 3. Common knowledge? Where, when, whom?
- C. What do you think of the statement: "The doctors come to treat patients, not Indians?"

Exhibit No. 6—Continued

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- IV. To what extent are the health professionals delegating responsibilities of health care to members of the Indian community?
- A. What are your thoughts and feelings about Indian involvement? (In the Indian Health Service).
 1. Do you see a difference between policy and management?
 2. Specific example.
 3. How do you see IHS functioning now? In your opinion, how is IHS functioning?
 - B. What thoughts do you have concerning the Indian Advisory Board?
 1. Are they representative of the Indian community?
 2. What thought do you have concerning the communication:
 - a) With the Advisory Board per se?
 - b) With the Indian people via the Advisory Board?
 - C. What do you think about having more Indian professionals working with you?
 - D. Is Indian involvement of value? Why or why not?
 1. How do you see yourself as a professional in promoting Indian involvement?
 2. Do you see this as a part of your function?
 - E. In your opinion, was community involvement stressed enough or too much in your orientation period?
 1. Does emphasis on Indian involvement continue?
 2. From whom does the emphasis come?
 3. Is it too much, too little, or about right?
- V. To what extent are the Indian communities accepting responsibility of community control and decision-making?
- A. What are your thoughts concerning the Indian communities' ability to actively participate in community control--
 1. Policy
 2. Management
 - B. How do you see the way the Advisory Board functioning now in its effect on the total health service?
 - C. Would you like to see more or less Indian involvement or involvement in a different manner?

PILOT STUDY QUESTIONNAIRE C₁
CLAREMORE, OKLAHOMA - JULY 2, 1971

INTRODUCTION:

I am Rosemary Williams/Janice Kekahbah. I am interested in your thoughts and feelings concerning the care given given by Indian Health Service: its good points, its bad points, and any suggestions you may have for improvement.

I will not use names; and any information will be confidential. The information that you give me will become a part of a larger study. The information will be used by Indian Health Service and the Indian people in bringing about any necessary changes and improvements in the overall system.

Exhibit No. 6—Continued

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QUESTIONNAIRE C₁

I. Background Information:

- A. Age:
- B. Tribe:
- C. Education:
 - 1. Degrees
 - 2. Special Training
- D. Employment:
- E. Current Family:
 - 1. Marital Status (Indian or non-Indian Spouse)
 - 2. Children--
 - 3. Family Income
 - 4. Place of Residence
 - a. Community
 - b. House, apartment, et.
- F. Family of Origin:
 - 1. Education
 - a. Mother
 - b. Father
 - 2. Income
 - a. Mother
 - b. Father
 - 3. Place of Residence
 - 4. Nationality
 - a. Mother
 - b. Father
 - 5. Number of Siblings

II. Satisfaction of the Consumer of Health Care Services:

- A. What do you think of the Indian Health care system?
- B. Health care given--quality and quantity
- C. Personnel:
 - 1. Do physicians and nurses spend as much time with you as you think and feel they should?
 - 2. What feelings do you have when dealing with the nurses and physicians?
 - 3. Do you feel as though they really listen to you?

Exhibit No. 6--Continued

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4. Do you think they are really interested in your well-being?
 5. Do they use technical words that you can't understand?
 6. Is there any difference between treatment given by Indian nurses and physicians and non-Indian nurses and physicians?
 7. Is there any difference between the treatment given by physicians and nurses?
- D. Tell me about the last time you were here:
1. How long were you here? Is that usual?
 2. Were you glad you came?
- E. Do most of the people you know feel free to use this service?
1. Do you?
 2. How frequently do you come?
 3. Do you use other health facilities?
- F. Tell me what you think and feel about the fact that the Federal Government provides Indians with health care?
1. If helper-helpee relationships--
 - a. Where did it start?
 - b. Do professionals start, promote, or discourage it?
 2. Do you know it is in partial fulfillment of treaty?
- G. Facilities:
1. Lunch
 2. Restrooms
 3. Privacy
 4. Child Care
- III. How are the value incongruencies existing in a cross-cultural system dealt with?
- A. Do you see any difference in treatment from Indians as opposed to non-Indians?
 - B. What constitutes a "good" nurse or physician from a "bad" one?
 - C. Do you see any difference in Indian Health Service now as in the past?
 - D. What reaction do you have to the following statement?
"All Indian health personnel are the same."
 - E. Are there any areas in which nurses and physicians talk about repeatedly that you tire of hearing?
 1. Diet, cleanliness, etc.

Exhibit No. 6—Continued

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- F. What do you think of medicine men?
- IV. To what extent are the health professionals delegating responsibilities of health care to members of the Indian community?
- A. Do you feel that you have any say in the policy or management of IHS?
- B. Do you think there should be more involvement on the part of Indian people in IHS?
- C. What are your thoughts concerning the Indian Advisory Board?
1. Do you know anyone on that board?
 2. How did you learn about it?
 3. Has any board member ever asked your opinion on how care should be given or improved?
 4. Do you think they represent the majority of Indians?
- D. What do you think of the community health representatives?
- E. What would you think of more Indian youth from your community becoming nurses or physicians and returning to the community to work?
- F. Who has approached you with the idea of getting more involved in Indian Health?
- G. Do the physicians and nurses appear open to your thoughts and feelings of how health care is provided?
- V. To what extent are the Indian communities accepting responsibilities of community control and decision-making?
- A. Do you think it is your right to have a say concerning how care is given to you and other Indians?
- B. Are you interested in having a say?
- C. Do you think your friends and family are interested in having a say?
- D. Advisory Board--
Do you have any thoughts about how A.B. might function better?

APPENDIX C

CODESHEET FOR RESEARCH STUDY

Instructions

You will find attached (1) a code, (2) a definition of terms and (3) general information about Indians obtained from high-status informants within the Albuquerque Area and through participant observation by the researchers. First, read the question and the corresponding code to be used with the questionnaire items. Listen to the response to the questionnaire items read by the researchers and score the responses using the code. Give your score for each response to the score keeper who will tabulate the data.

Definition of Terms

Melting Pot Theory: there are no differences between ethnic groups. That all Americans share the same values, beliefs and mores. Any differences which may have existed are in the past and have now been assimilated.*

Cultural Pluralism Theory: Allos for and encourages ethnic group identity and differences with each group "emphasizing its particular deep-rooted cultural heritage."**

*Gordon Milton M. Assimilation in American Life, (New York: Oxford University Press, 1964), Chapter 5.

**Ibid, p. 142.

Exhibit No. 6—Continued

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CODESHEET

CODE FOR: III—How are the value incongruencies in a cross-cultural system dealt with?

A. What do you know about Indians?

1. Stereotypes ALL Indians without differentiating between tribes.....-1
2. Differentiates between tribes.....+1
3. Gives general information about Indians that disagrees with what Indian people have to say about Indian people.*-1
4. Gives general information about Indians that agrees with what Indian people have to say about Indian people.....+1
5. Gives melting pot theory.....-1
6. Gives the cultural pluralism theory.....+1
7. Discusses Indian culture as it differs from the white culture using the white culture as the norm (white liberal)**-1
8. Compares the differences and similarities of the white culture and the Indian culture using neither white nor Indian as the norm but treats them objectively as two different cultures.....+1 (objective)***

*See attached general information about Indians which was obtained from interviewing six high-status informants within the Albuquerque Area and from participant observation within the Albuquerque Area.

**The white-liberal approach reflects the attitude that Indians are unable to meet the standards and expectations of society BUT seeks the "reasons" for this inability in quaint and unusual cultural factors that must be accounted for if the Indian is ever going to be able to conform.

***The objective approach reflects an attitude that there are two cultures which have different values, mores and traditions. These two cultures are interrelating with one another and the difference may prove to be problematic in some aspects of the relationship.

Exhibit No. 6—Continued

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- B. What are the differences in treating Indians as opposed to non-Indians?
1. Fails to recognize differences between white middle America and the Indian communities.....-1
 2. Recognizes the differences between white middle America and the Indian communities.....+1
 3. Observes differences between the Indian community and white America but ascribes the differences to socio-economic factors rather than to cultural factors.
 4. Observes differences between the Indian community and white America and ascribes the differences to cultural factors...+1
 5. Observes differences between the Indian community and white America but fails to actively deal with the resultant problems in the delivery of health care services.....-1
 6. Takes cultural differences into account and actively deals with any problems which may result from cultural differences in the delivery of health care services.....+1
- C. What do you think about Medicine Men?
1. Medicine men are effective.....+1
 2. Medicine men are not effective.....-1
 3. States that going to the Medicine man can't hurt and might help.....+1
 4. States that going to the Medicine man is dangerous or harmful in some way.....-1
 5. Does or would like to refer patients to Medicine men.....+1
 6. Does not and/or would not refer patients to Medicine men...-1

Exhibit No. 6—Continued

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- 7. Recognized the importance of the Medicine Man to the Indian community.....+1
- 8. Underestimates the importance of the Medicine Man to the Indian community.....-1

1

General Information

Six high-status informants within the Indian communities were interviewed. From these interviews and through participant observation within the Albuquerque Area some general information was obtained.

It was generally agreed upon that:

Indian people are tribalistic and that each tribe has specific sets of values and customs which vary from tribe to tribe and, to a lesser extent, from individual to individual within each tribe. There are however, many characteristics which all (most) Indian people have in common. Some of these are a great respect for older people, religion, family and culture. Most of those informants interviewed believed the Medicine Men to be effective and held him in high esteem. The land is highly valued--not so much for the economic value placed on it by the white society but for itself and as a base for a tribal group as well as the connection land has with nature of which the Indian considers himself, intellectually and emotionally, an intricate part. There is a great pride and necessity for the individual to maintain both tribal and Indian identity. Indian are intelligent, sensitive and creative. By white man's standards this Indian is, not as a group, as highly educated or as economically sound as his white counterparts. The Indian is aware of the low esteem with which many whites hold him. The Indian, in his dealings with others is less

Exhibit No. 6—Continued

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demanding, competitive and self-assertive as compared with the white society with its emphasis and preoccupation with competition, economic gain and "getting ahead in the world".

APPENDIX D

RESEARCH STUDY QUESTIONNAIRE

Research study questionnaire C₂ was designed as a guide for interviewing subjects in the research study sample population of consumers of health care services.

Research study questionnaire D₂ was designed as a guide for interviewing subjects in the research study sample population of deliverers of health care services.

RESEARCH STUDY QUESTIONNAIRE C₂

Albuquerque Area

INTRODUCTION:

I am Rosemary Williams/Janice Kekahbah. I am interested in your thoughts and feelings concerning the care being given by Indian Health Service: its good points, its bad points and any suggestions you may have for improvement.

I will not use names, and any information will be confidential. The information that you give me will become a part of a larger study. The information will be used by Indian Health Service and the Indian people in bringing about necessary changes and improvements in the overall system of Indian health.

Before I begin, are there any questions you have concerning me or what I am doing or how the information will be used?

Exhibit No. 6—Continued

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QUESTIONNAIRE C2

I. Background Information:

- A. Age
- B. Sex
- C. Education BIA or non-BIA
- D. Tribe Quartum
- E. Employment
- F. Current Family:
 - 1. Marital Status Indian or non-Indian
 - 2. Children
 - 3. Family Income
 - 4. Place of Residence
 - a. Community
 - b. Own or Rent
 - c. Number of rooms

G. Family of Origin:

- 1. Education of
 - a. mother
 - b. father
- 2. Nationality (ethnic affiliation)
 - a. mother
 - b. father
- 3. Place of residence as child
- 4. Family income
- 5. Number of siblings

H. Religious Affiliation

I. How frequently do you come to the PHS clinic?

- 1. When was the last time you used PHS facility?
- 2. Have you had any serious illnesses?
- 3. Do you ever go anywhere else for health care?

Exhibit No. 6—Continued

127

II. Satisfaction of the Consumer of Health Care Services:

- A. Does IHS provide you with the best health care that is possible?
1. Do you think IHS provides you with the same quality of care that the private non-Indian patient receives from his private physician?
 2. Do you think that IHS provides you with the same quantity of care that the usual non-Indian receives?
 - a. out-patient services
 - b. eye care
 - c. dental care
 3. What prevents IHS from delivering better and more inclusive care services?
- B. Have you ever been turned away from an IHS facility?
1. Have you ever been told that you could not receive medicines, surgery or treatment due to lack of funds or equipment?
 2. Have you ever been refused Medical assistance outside of IHS on the grounds that Indians should be cared for by IHS?
- C. What would you change about IHS if you could?
- D. Are the physical conditions a hinderance in your receiving and obtaining optimum health care?
1. How far do you have to travel to the nearest clinic?
 2. How many days a week is the nearest clinic open?
 3. How do you usually get there and how long does it take?

Exhibit No. 6—Continued

128

4. How far do you have to travel to the nearest hospital?
 5. Have you ever left to go eat lunch, etc., and lost your turn?
 6. Is there a place close to get food?
 7. Are there bathroom facilities available and convenient?
 8. Are clinic hours convenient for you?
- E. Are the numbers and abilities of the physicians and nurses adequate?
1. Which of the following people seems to spend the most time with you and seems to be the most interested in you:
listens and talks with you?
 - a. Indian Nurses
 - b. Indian Physicians
 - c. Non-Indian Nurses
 - d. Non-Indian Physicians
 2. Would you like to see more Indian professionals within IHS? (If yes)
 - a. Is it because the Indian consumer will benefit in some way?
 - b. Is it because the Indian people will benefit in the area of better job opportunities?
 3. Who in the clinic seems to take the most time and effort in promoting overall health for you and your family?
- F. What are some of the difficulties in working with the IHS nurses and physicians?
1. Are there any difficulties in communication due to language?
 2. Do the physicians or nurses use technical terms that you do not understand?

Exhibit No. 6—Continued

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3. Do you feel free to discuss your illnesses with physicians and nurses?
 - a. Do the physicians listen to you and seem interested in you?
 - b. Do the nurses listen to you and seem interested in you?
 - c. Do you feel you can trust the physicians and nurses?
 - d. Have you ever felt embarrassed in discussing some of your illnesses?
 - e. With whom do you feel the most free in discussing your health?

4. Is it always possible or reasonable to follow the advice given by the physician and nurse--does it usually make sense and is it physically possible?

5. During examinations, are you able to cooperate with the physician?
 - a. Does he discuss your problem with you or just ask you questions and tell you what to do?
 - b. Are parents allowed to stay with their children during examination and treatment?
 - c. Do you have the feeling that you and the physician are working together to find out what is wrong with you and then are working together to find the best treatment?

6. Has anyone at the clinic ever treated you badly?
 - a. Has anyone been rough with you, used abusive language or said anything to or about you that made you feel bad?
 - b. If so, who and when?
 - c. What did you do right before someone treated you badly?
 - d. What did you do right after someone treated you badly?
 - e. What is your idea as to the cause of such behavior on the part of the personnel?

7. How long do you usually have to wait in the clinic before being seen by the physician?
 - a. What do you think the reason for having to wait long periods of time could be?
 - b. Does having to wait long periods of time tend to keep you from coming to the clinic?

- G. What would you like the nurses and physicians to know or understand that would make your visits to the clinic more pleasant?

Exhibit No. 6—Continued

130

- H. Do you feel free to go to the PHS clinics or do you feel like you are imposing on someone or putting someone out?
- I. Tell me about one time you went to the clinic.
- III. How are the value incongruencies that exist in a cross-cultural system dealt with?
- A. Do you think the non-Indian physicians and nurses understand and respect your culture and traditions?
- B. What are the differences in treatment given you by Indian physicians and nurses compared to that given by non-Indian physicians and nurses?
- C. When you get sick, where do you go?
- D. What do you think about Medicine Men?
1. How frequently do you go to him when you are sick?
 2. Do many people you know go to the Medicine Man?
 3. Upon what occasion--what illnesses--would you go to the Medicine Man and on what occasion would you go to the PHS doctor?
 4. Have you ever talked with the physician about the Medicine Man? (If not, what stops you?).
 5. Have you ever talked with the nurses about the Medicine Man? (If not, what stops you?).
 6. What do you think the PHS physicians think about Medicine Men?
 7. Do you think it would be possible or advisable to have the PHS pay for visits to the Medicine Men?

Exhibit No. 6—Continued

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8. Do you think it would be possible for the Medicine Men and the PHS physician to have a working colleague type relationship?
- E. Do you think non-Indian physicians and nurses allow their white values to interfere with treating Indian people?
1. What do Indians value?
- F. Have you ever been told to be on a diet which is extremely different from your usual foods and the types of foods Indian people usually eat?
- G. Do you think that the PHS physicians and nurses conduct themselves in the same professional manner while working with Indians as they do while working with non-Indian people?
1. Do you like the physicians and nurses to wear uniforms or street clothes?
 2. Do physicians and nurses working in IHS put forth as much effort in maintaining their own professional appearance as those physicians and nurses working on a fee for service basis?
- H. Are all PHS personnel the same or some better than others?
- I. What efforts have the nurses and physicians made to get to know the Indian people--not just in the clinic--but the people themselves?
- J. What efforts have you made to help the physicians and nurses learn more about Indian people?
- K. Describe the differences between a good nurse and a bad nurse?
- L. Describe the differences between a good physician and a bad physician?

Exhibit No. 6—Continued

132

- IV. To what extent are the health professionals delegating responsibilities of health care to members of the Indian community?
- A. What are your thoughts about involvement of the Indian people in policy setting within IHS?
1. How much do you think IHS is influenced by yourself and other Indian people?
 2. Has anyone asked your opinion on the policy or functioning of IHS?
 3. Would you like to see more involvement by Indian people in IHS?
- B. What do you know about the Indian Health Advisory Board?
1. How has the Indian Advisory Board affected you?
 2. What interaction have you had with the members of the Health Advisory Board?
 3. Have you made any efforts to contact the Advisory Board member from your community?
 4. Do you know the name of the Advisory Board member from your community?
 5. Is the Advisory Board really instrumental in setting policy in the IHS?
 6. Is there any change you'd like to see in the functioning of the Advisory Board?
- C. What do you know about the Community Health Representatives?
1. How has the program concerning CHR's affected you?
 2. Is there anything the CHR's are doing that you think they should not be doing?

Exhibit No. 6—Continued

133

3. Is there anything the CHR's are not doing that you think they should be doing?
- E. What do you know about the Mental Health Worker?
1. Do you know the Mental Health Worker here?
 2. Has his services benefited you or anyone you know?
- F. Would you like to see more Indian young people from your community become physicians and nurses and return to the community to work in IHS?
- G. Who has approached you concerning what you think of IHS, and how it should be run?
- H. What do you think that the physicians and nurses might do to make young Indian people want to become doctors and nurses themselves?
- V. To what extent are the Indian communities accepting responsibilities of community control and decision-making?
- A. Do you think it is your right to have a say concerning how care is given to you and other Indian people?
 - B. Are you interested in having a say in how health care is provided?
 1. Do you think your family and friends are interviewed in having a say in how health care is provided?
 2. Do you have any thoughts about how the Health Advisory Board might function better?
 - C. Have you ever been confronted by a hostile, belligerent or drunk doctor or nurse?

Exhibit No. 6—Continued

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- D. What have you done to improve health services, e.g., talking to physicians and nurses, family and friends, members of the Advisory Board?
- E. What do you plan to do to improve health care services to your community and Indian people?

RESEARCH STUDY QUESTIONNAIRE D₂

Albuquerque Area

INTRODUCTION:

I am Rosemary Williams/Janice Kekahbah. I am interested in your thoughts and feelings concerning the care given by Indian Health Service: its good points, its bad points and any suggestions you may have for improvement.

I will not use names; and any information will be confidential. The information that you give me will become a part of a larger study. The information will be used by Indian Health Service and the Indian people in bringing about necessary changes and improvement in the overall system of Indian health.

Before I begin, are there any questions you have concerning me or what I am doing or how the information will be used?

QUESTIONNAIRE D₂

I. Background Information:

A. Age

B. Sex

C. Education

1. Degrees
2. Special Training

D. Present Position

1. Title
2. GS Level
3. Years in IHS
4. Career or other

(for 2 yr. GMO--What stops you from making a career of IHS?).

5. How is it that you got into IHS?
6. Employment before IHS.
7. Total Number of Years in Profession
8. If you had your preference, would you rather work with Indians or non-Indians?

E. Current Family:

1. Marital Status Indina or non-Indian
2. Children
3. Family Income
4. Place of residence
 - a. community
 - b. own or rent
 - c. number of rooms

Exhibit No. 6—Continued

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F. Family of Origin:

1. Education
 - a. mother
 - b. father
2. Family Income
3. Place of residence as a child :
4. Nationality
 - a. mother
 - b. father
5. Number of Siblings

G. Religious Affiliation

II. Satisfaction of Deliverers of Health Care Services:

- A. Are you able to practice your profession to the upmost of your capabilities while working in IHS?
- B. Are you hindered by the hierarchial system of IHS?
 1. Give a specific example.
 2. Who in the system is responsible?
- C. What would you change about IHS if you could?
- D. Are the physical conditions a hinderance to the deliverer of optimum health care?
 1. Is the equipment and laboratory facilities adequate?
 2. Do you have to travel outside the main facility--how far?
 3. What is the average time you spend with each patient?
 4. How far do patients have to travel to get to the clinic?
 5. How long do patients usually have to wait in the clinic to be seen by the physician?
 6. How is it that patients must wait so long?

Exhibit No. 6—Continued

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- a. Is this different from private patients who pay fee for services?
 - b. What time do physicians start seeing patients in the mornings?
 - c. How many examining rooms are there per patient?
 - d. What is the average ratio of physicians per patients per clinic day?
 - e. What is the average ratio of nurses per patients per clinic day?
- E. Are the numbers and abilities of other professionals adequate?
- 1. Is there any discriminatory practices for or against Indian and/or non-Indian workers?
 - 2. Would you like to see more Indian professionals within IHS?
 - a. Is it because it will benefit the consumer in some way?
 - b. Is it because it will benefit the Indian people in the area of job opportunity?
 - 3. Are you asked to perform duties outside of your job description?
- F. What are the difficulties in working with Indian people?
- 1. Are there any communication difficulties due to language?
 - 2. Are there any difficulties in communication due to terminology?
 - 3. Are the patients reluctant to describe symptoms?
 - 4. Do the patients follow medical advice and prescription?
 - 5. Are the patients cooperative during diagnosis and treatment?
 - 6. How frequently are you confronted with overt or covert hostility?
 - a. How do you handle hostile patients?
 - b. What is your idea as to the cause of the hostility?
 - c. When was the last time you were confronted by a hostile patient?
 - d. Tell me what happen before and after the incident.

Exhibit No. 6—Continued

139

- III, How are the value incongruencies in a cross-cultural system dealt with?
- A. What do you know about Indian?
 - B. What are the differences in treating Indians as opposed to non-Indians?
 - C. When an Indian become ill, where does he go?
 - D. What do you think about Medicine Men?
 1. Are the techniques of the Medicine Men effective?
 2. Does the prescriptions or proscriptions of the Medicine Man conflict with that of the IHS?
 3. Do you think it would be possible to establish a working colleague type relationship between the Medicine Man and the PHS personnel and staff?
 4. What would you think of IHS hiring Medicine Man as consultants or having them on staff with equal status to the PHS physicians?
 - E. What do Indians value?
 - F. Are Indian peoples' dietary habits different from that of the usual non-Indians?
 1. Do Indians tend to eat more starches and fried foods?
 2. Is the difference culturally determined or economically determined?
 - G. Do you conduct yourself in the same professional manner while working with Indian patients as you imagine yourself doing when working with private patients on a fee for service basis?

Exhibit No. 6—Continued

140

1. In practice with private patients, would you wear your hair on your collar, a beard, and sandals?
 2. How many physicians and/or nurses do you know who are currently, do the above in private practice?
 3. In practice with Indian patients, would you wear your hair on your collar, a beard and sandals?
 4. How many physicians and/or or nurses do you know who are currently do the above in working with Indians?
- H. Did you receive an orientation before you came to work at this clinic?
1. What did you receive in your orientation that was of help to you in working with the Indian population who come to this clinic?
 2. What was included concerning Indian involvement in your orientation?
 3. Of what help was your orientation in assisting you to get to know the Indian people with whom you are now working?
- I. What efforts have members of the Indian community made to assist you in getting to know the Indian people?
- J. What efforts have you made in getting to know the Indian people?
- IV. To what extent are the health professionals delegating responsibilities of health care to members of the Indian community?
- A. What are your thoughts concerning involvement of the Indian people in policy setting within IHS?

Exhibit No. 6—Continued

141

1. In your opinion, how is IHS functioning now in relation to community involvement?
 2. Give a specific example of involvement of the Indian people in IHS.
 3. How much influence do the Indian people have in policy making?
- B. What do you know about the Indian Health Advisory Board?
1. How had the Indian Health Advisory Board effected you?
 2. What interaction have you had with the Indian Advisory Board?
 3. What efforts have you made to bring about a working relationship between yourself and the Advisory Board?
 4. In your opinion, is the Advisory Board representative of the grassroots Indian?
 5. What do you think about the lines of communication between yourself and the Advisory Board?
 6. What benefits have been brought about by the establishment of the Advisory Board?
 7. Is there anything the Advisory Board is not doing that you think they should be doing?
 8. Is there anything the Advisory Board is not doing that you think they should be doing?
 9. Give me the name of some of the members of the Advisory Board.
 10. Is the Indian Advisory Board really instrumental in setting policy in IHS?

Exhibit No. 6—Continued

142

- C. What do you know about the Community Health Representatives?
1. How has the CHR program affected you?
 2. What interaction have you had with the CHRs?
 3. In your opinion, are the CHRs of service to the grassroots Indian people?
 4. What do you think about the lines of communication between yourself and the CHRs?
 5. What benefits have been brought about by the establishment of the CHR program?
 6. Is there anything the CHRs are not doing that you think they should be doing?
 7. Is there anything the CHRs are doing that you think they should not be doing?
 8. Give me the name of the CHR in this community.
 9. What efforts have you made to establish a working relationship with the CHRs?
- D. What do you think about having more Indian professionals working with you in IHS?
- E. What is the value of Indian community involvement in respect to Indian people receiving better health care?
- F. In your opinion, was community involvement stressed enough or too much in your orientation period?
1. Does emphasis on Indian involvement continue after the initial orientation period?
 2. From whom does the emphasis come?

Exhibit No. 6—Continued

143

3. Is it too much, too little, or about right?
- G. What do you see as your role as a health professional, working with Indian people, in the area of recruitment into the health professions?
- V. To what extent are the Indian communities accepting responsibility of community control and decision-making?
- A. What are your thoughts concerning the Indian communities' activities in community involvement now?
- B. Would you like to see more or less Indian involvement or involvement in a different manner?
- C. Have you ever been confronted by hostile, belligerent or drunk patients?
1. When was the last time?
 2. Tell me what happen before and after the incidents?
 3. Were you assisted and/or supported by other Indians in the community or Indian personnel?
 4. What formal or informal control is provided by the community regarding aggressive members of the community toward health workers?

Exhibit No. 7

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
PUBLIC HEALTH SERVICE
HEALTH SERVICES AND MENTAL HEALTH ADMINISTRATION

Date: November 14, 1972
Reply to
Attn of: AO-DEEO
Subject: Albuquerque Area Employment
To: Dr. K. Kasuga
Director, Albuquerque Area
Indian Health Service

The attached employment analysis is intended to show employment increases and decreases, total Area, total Indian, by comparing fiscal year quarters. The analysis also indicates the same information by General Schedule and wage grades.

The analysis was computed from the Albuquerque Area Quarterly Employment Listing Reports. A more concise version is furnished below:

	<u>Total Area Employment (GS & WG)</u>	<u>Total Ind. Emp. (GS & WG)</u>	<u>Indian Employment Increase/Decrease</u>
4th Qtr. FY-70.	431	260	-
1st Qtr. FY-71	458	286	+ 26
2nd Qtr. FY-71	469	296	+ 10
3rd Qtr. FY-71	480	317	+ 21
4th Qtr. FY-71	503	335	+ 16
1st Qtr. FY-72	542	365	+ 17
2nd Qtr. FY-72	545	376	+ 11
3rd Qtr. FY-72	538	368	- 8
4th Qtr. FY-72	534	342	- 26
1st Qtr. FY-73	556	387	+ 61
			+128 overall gain

John Gomez, Jr.
Associate Deputy EEO Officer
Albuquerque Area IHS

TOTAL ANALYSIS OF AREA AND INDIAN EMPLOYMENT FROM
4/30/70 thru 10/31/72 (DOES NOT INCLUDE CO)

		1st Qtr. FY-71					2nd Qtr. FY-71			3rd Qtr. FY-71			4th Qtr. FY-71				
		Total Emp.	Total Ind.	Total Inc.	Total Dec.	Total Emp.	Total Ind.	Total Inc.	Total Dec.	Total Emp.	Total Ind.	Total Inc.	Total Dec.	Total Emp.	Total Ind.	Total Inc.	Total Dec.
		as of 4/30/70	as of 4/30/70	as of 9/30/70	as of 9/30/70	as of 12/31/70	as of 12/31/70	as of 10/01/70	as of 12/31/70	as of 3/31/71	as of 3/31/71	as of 1/01/71	as of 3/31/71	as of 6/30/71	as of 6/30/71	as of 4/01/71	as of 6/30/71
(1)	GS Tot.	327	166	365	203	354	195			365	212			391	232		
	Alb.			+38	+37	-11	-8	-8	+11	+17	+17	+26	+20	+20	+20		
	Area			44	43	15	15	-28	10	10	10	10	10	10	10	SQ10	
	Emp.	26	26	36	31	46	42	+11	49	45	+3	55	52	+7	+7		
		4	37	58	45	58	47	+2	68	59	+12	70	61	+2	+2		
		5	48	23	46	29	+6	45	28	-1	49	33	+5	49	35	+2	
		6	27	11	39	20	+9	43	25	+5	44	25	SQ25	54	32	+7	
		7	49	17	54	16	-1	58	21	+5	54	21	SQ21	56	24	+3	
		8	2	-	4	2	+2	4	2	SQ 2	4	2	SQ 2	4	2	SQ2	
		9	31	8	36	6	-2	34	5	-1	34	6	+1	32	6	SQ6	
		10	5	2	3	2	SQ 2	3	2	SQ 2	3	2	SQ 2	4	2	SQ2	
		11	14	3	14	5	+2	17	6	-1	16	6	SQ 6	20	5	-1	
		12	14	2	10	1	-1	10	1	SQ 1	12	1	SQ 1	12	1	SQ1	
		13	13	-	15	1	+1	15	1	SQ 1	16	1	SQ 1	18	1	SQ1	
		14	5	-	5	-	-	6	-	-	5	-	-	4	-	-	
		15	-	-	1	-	-	4	-	-	1	1	+1	3	1	-	
(2)	WG Tot.	104	94	93	83	115	101	+18	115	+4	+4	+3	112	103	-2	-2	
	Alb.			-11	-11	-11											
	Area			18	18	32	30	+12	18	18	-12	13	13	-5	-5		
	Emp.	3	3	22	22	23	23	+1	18	18	-5	18	18	SQ18	SQ18		
		4	-	-	1	1	+1	7	7	+6	1	1	-6	-	-	-1	
		5	26	26	25	25	-1	26	24	-1	24	24	SQ24	30	30	+6	
		6	4	1	-	-	-1	-	-	-	-	-	-	1	1	+1	
		7	8	4	5	2	-2	5	3	+1	5	2	-1	3	-	-	
		8	8	8	6	6	-2	7	7	+1	5	5	-2	7	4	+1	
		9	6	4	15	9	+5	14	7	-2	13	9	+2	14	13	+4	
		10	7	6	-	-	-6	1	-	-	2	1	+1	*25	1	-	
		11	-	-	1	-	-	-	-	-	-	-	-	-	-	-	
		12	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
									*29	*27	*+27			*23	-4		
(3)	Area Totals GS & WG	431	260	458	286	469	296	+10	480	317	+21	SQ 3	335	+16			

Exhibit No. 7—Continued

	1st Qtr. FY-72			2nd Qtr. FY-72			3rd Qtr. FY-72			4th Qtr. FY-72			1st Qtr. FY-73		
	Total Emp.	Total Ind.	Total Inc. Dec.	Total Emp.	Total Ind.	Total Inc. Dec.	Total Emp.	Total Ind.	Total Inc. Dec.	Total Emp.	Total Ind.	Total Inc. Dec.	Total Emp.	Total Ind.	Total Inc. Dec.
	as of 9/31/71	as of 9/31/71	7/01/71 9/31/71	as of 12/31/71	as of 12/31/71	1/01/72 12/31/71	as of 3/31/72	as of 3/31/72	1/01/72 3/31/72	as of 6/30/72	as of 6/30/72	4/01/72 6/30/72	as of 9/30/72	as of 9/30/72	7/01/72 10/30/72
(1) GS Tot. Alb. Area Emp.	405	247		418	258		418	258		422	243		455	296	
	+14	+15	+15	+13	+11	+11	-	-	-	+4	-15	-15	+33	+53	+53
GS-2	11	11	+1	12	12	+1	15	15	+3	13	13	-2	36	31	+18
3	62	57	+5	66	63	+6	67	64	+1	85	72	+8	79	74	+2
4	81	73	+12	81	71	-2	75	67	-4	70	56	-11	74	72	+2
5	48	33	-2	50	37	+4	54	37	SQ37	48	36	-1	59	41	+5
6	50	28	-4	48	30	+2	47	31	+1	41	24	-7	41	28	+4
7	52	22	-2	54	20	-2	57	20	SQ20	65	22	+2	66	25	+3
8	4	2	SQ2	5	3	+1	4	2	-1	4	2	SQ2	4	2	SQ2
9	33	9	+3	36	10	+1	32	10	SQ10	30	4	-6	25	5	+1
10	5	3	+1	5	3	SQ3	5	3	SQ3	4	3	SQ3	4	3	SQ3
11	22	6	+1	22	6	SQ6	22	6	SQ6	24	8	+2	32	11	+3
12	14	1	SQ1	15	1	SQ1	15	1	SQ1	14	1	SQ1	15	2	+1
13	16	1	SQ1	17	1	SQ1	19	1	SQ1	18	1	SQ1	18	1	SQ1
14	5		-	5		-	4		-	4		-	4		-
15	2	1	SQ1	2	1	SQ1	2	1	SQ1	2	1	SQ1	2	1	SQ1
(2) WG Tot. Alb. Area Emp.	127	118		127	118		120	110		112	99		101	91	
	+15	+15	+15	-	-	-	-7	-8	-8	-8	-11	-11	+11	+8	+8
WG	26	26	+13	26	22	-4	16	16	-6	10	10	-6	9	9	-1
3	24	24	+6	24	23	-1	17	17	-6	17	15	-2	4	14	-1
4	3	3	+3	3	3		3	2	-1	2	2		2	2	SQ2
5	24	24	-6	24	17	-7	16	16	-1	22	22	+6	18	18	-4
6	-	-	-1	-	-	-	-	-	-	-	-	-	-	-	-
7	3	1	+1	3	6	+5	10	7	+1	9	6	-1	7	6	+2
8	5	4	SQ4	5	5	+1	5	5	SQ5	5	5	SQ5	7	7	+2
9	12	9	-4	12	12	+3	16	12	SQ12	15	10	-2	15	11	+1
10	2	1	SQ1	2	1	SQ1	2	1	SQ1	3	2	+1	3	2	SQ2
11	1	1	+1	1	1	SQ1	1	1	SQ1	2	2	+1	1	1	-1
12															
(3) Area Totals GS & WG	*27	*25	+2	*27	*+28	*+3	*35	*33	*+5	*27	*25	-8	*25	*23	-2
	542	365	+17	545	376	+11	538	368	-8	534	342	-26	556	387	+61

* Non-graded Positions

THE EMPLOYMENT OF AMERICAN INDIANS
IN NEW MEXICO AND ARIZONA

STAFF REPORT # 3
ALBUQUERQUE/PHOENIX HEARINGS

U. S. COMMISSION ON CIVIL RIGHTS
NOVEMBER 1972

Exhibit No. 8—Continued

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INTRODUCTION

American Indians live in a state of economic underdevelopment and deprivation. More than any other minority group they suffer from high unemployment rates and low wages. Indians often lack basic work experience and vocational skills. On many reservations nearly 50 percent of the labor force is unemployed.

Indians living on reservations in Arizona and New Mexico are often isolated from the growth and prosperity of the majority society. The social and economic isolation experienced by other minority groups is compounded for Indians by the geographical isolation of reservations. As a result, residents of reservations usually have little interaction with the majority population. Even on reservations, Indians are isolated. The sparse populations, the large land areas, and the poor transportation and communication facilities all contribute to the social, economic and physical isolation of Indians.

An analysis of Indian employment patterns both on and off reservations requires recognition that there is a difficulty in calculating Indian unemployment rates. A large proportion of Indians are not counted in the labor force. While the average participation rate for the total labor force in the United States in 1969 was approximately 60 percent, the corresponding rate for most reservations in the Southwest was about 40 percent. One reason for the low participation of Indians

in the labor force is that many Indians do not actively seek employment because of ill health or physical handicap, family responsibility, lack of training and experience, or cultural conflict.^{1/}

The lack of English proficiency is another hindrance. For example, in a recent survey on the Navajo Reservation only 56.5 percent of the men and 43.8 percent of the women had some spoken and written proficiency with the English language.^{2/} Lower educational attainment levels compared to the other population groups in New Mexico and Arizona, as well as limitations in speaking English, place Indians in an unfavorable position in competing for jobs on and off the reservation.^{3/}

Most of the Indian labor force in New Mexico and Arizona is relatively young, poorly educated, and largely unskilled. A majority of the Indian labor force is employed on reservations. Usually this employment is of a sheltered type. That is, Indians are usually extended preference when reservations jobs are available. Despite this sheltered employment situation, considerable unemployment and underemployment exists on most of the reservations in New Mexico and Arizona.

RESERVATION LABOR FORCE CHARACTERISTICS

The Bureau of Indian Affairs estimates that in 1972 about 28,876 Indians in New Mexico, and 38,407 Indians in Arizona, 16 years and over, were in the labor force.^{4/} Of this total, 11,047 or 38 percent of the

Indian labor force in New Mexico was unemployed, and 5,229 were identified as being underemployed. Of the Indians in the labor force in Arizona, 15,520 or 40 percent were classified as being unemployed. In contrast, the unemployment rate for all other population groups in 1972 was reported to be 5.4 percent in New Mexico and 4.1 percent in Arizona.

The estimated total Indian labor force for the BIA Albuquerque Area in 1972 was 11,987. Of this total about 3,391 Indians or 28 percent were unemployed. In the Navajo Area, 43,793 Indians were in the labor force, 19,219 or 44 percent were classified as unemployed. For the Phoenix Area, it was estimated that about 15,800 Indians were in the labor force. About 5,726 or 36 per-^{5/}cent were identified as unemployed.

Not only do Indians in Arizona and New Mexico have high unemployment rates, a significant number were reported to have only temporary employment. For example, the BIA estimated that 20 percent of the Indian labor force in Arizona was employed in a temporary or periodic basis. In New Mexico about 18 percent of the Indian labor force had only temporary employment.^{5/} These statistics indicate that seasonal or irregular work characterizes a significant part of employment available to reservation Indians.

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Of 43 reservations in Arizona and New Mexico, only five reservations (the Ak-Chin, Fort McDowell, and Salt River Reservations in Arizona and the San Felipe and Santa Ana Reservations in New Mexico) reported an unemployment rate under ten percent. The unemployment rate for reservation Indians in 1972 ranged from a low of 2 percent on the Fort McDowell Reservation in Arizona to high of 89 percent on the Alamo Reservation in New Mexico.^{7/}

In addition to temporary and seasonal employment, many Indians are employed in service related occupations.^{8/} A large number of reservation Indians in Arizona and New Mexico are engaged in governmental and related work. This employment is provided mainly by the Federal Government; the Bureau of Indian Affairs employed 1,633 Indians in New Mexico, and 1,717 Indians in Arizona. In addition, some state and local governmental units maintained operations on reservations, providing some jobs for Indians.

In 1969, the Indian Manpower Resources Study reviewed employment on five reservations in New Mexico and Arizona: Fort Apache, San Carlos, Papago, Acoma and Laguna. On the five reservations, 442 Indians (43 percent), of the 1,031 interviewed, indicated that they were employed in the governmental sector. Twelve of these indicated that they were employed by State agencies; 78 claimed that they were employed by the tribal government, and 352 indicated that they were employed by the Federal Government.^{9/} On some reservations the largest

Exhibit No. 8—Continued

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government employer is the tribe itself. For example, on the Navajo Reservation the tribe employs about 5,450 persons, nearly 45 percent of all those employed on the reservation. More significantly, 65.8 percent of all the wage and salary workers on the reservation are employed by the tribal government.^{10/}

Employment in the other sectors, such as agriculture, construction, manufacturing, transportation, communications, wholesale and retail trade, is usually limited. However, on some reservations, especially on the Navajo and Fort Apache Reservations in Arizona and the Laguna Reservation in New Mexico, employment in manufacturing, is significant, although small in relation to the reservation population.

Many reservation Indians are self-employed, usually in traditional occupations such as rugweaving, silversmithing, and sheepherding. No accurate statistics are available which would indicate the magnitude of this type of employment; however, the Navajo Manpower Survey did indicate that about 15 percent of those employed on the Navajo Reservation were employed in "traditional agricultural" categories, and about 16 percent were employed in "traditional nonagricultural" activities.

EMPLOYMENT PROFILE OF SELECTED RESERVATIONS IN NEW MEXICO AND ARIZONA

In this section, analysis will be presented on the manpower resources of five reservations in Arizona and New Mexico--The Fort Apache, San

Carlos and Papago Reservations in Arizona and the Acoma and Laguna Reservations in New Mexico. The data is derived from a survey conducted by Arizona State University and the Arizona State Employment Service in 1969, which was called the Indian Manpower Resources Study (IMRS).^{12/}

The Papago Reservation is the largest in geographic size and total population. Next in size and population are Fort Apache Tribe (population about 6,500) and San Carlos Reservation (population about 4,722).

The New Mexico tribes included in this study are somewhat smaller in geographic size and population. The Acoma Reservation had a population of 1,944 and the Laguna had 2,464 Indians. The two reservations are connected geographically, and their cultures are similar.

On the basis of 1,029 responses, the IMRS found that the most important employment for Indians on these five reservations was government. Over half (54.4 percent) of the Indians surveyed on the San Carlos Reservation indicated that they were employed in government jobs. On the Papago, Acoma, and Laguna Reservations over 30 percent of the Indians indicated that they had been or were employed in government related activities. (Table 1)

The Federal Government was the most important source of employment, providing about 80 percent of all government jobs. State government was relatively unimportant, but local government provided most of the remaining government jobs. Local government jobs were often provided by the tribe itself.

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Services are second to government as a source of employment. Approximately 23 percent of all the respondents on the Papago Reservation indicated that they were employed in services. Nearly 15 percent of the respondents on the Fort Apache Reservation, and 12 percent on the San Carlos Reservation were employed in service related occupations.

Approximately 30 percent of all employment on the Papago Reservation was related to agricultural and forestry categories. Lumbering was especially important on the Fort Apache and San Carlos Reservations. Mining, on the other hand, was relatively unimportant on the reservations in Arizona. However, on the Acoma and Laguna Reservations in New Mexico, mining was a major source of employment. According to the IMRS study 16 percent of the Indians on the Acoma Reservation and 13 percent on the Laguna were employed in this category.

The contract construction and transportation industries provided very few of the jobs on the reservations surveyed. None of the reservations in the study had a significant number of Indians employed in related activities such as communications, electric and gas services.

Manufacturing as a source of employment on the reservation was important on only two reservations--The Fort Apache and the Laguna. Twenty percent of all the respondents on the Fort Apache Reservation were employed in manufacturing. On the Laguna Reservation, 19 percent indicated employment in that sector.

Prior to the IMRS survey, less than 50 percent of the respondents were employed. (Table A)

Table A
Major Activity Most Of the Year
Prior to Indian Manpower
Resources Survey

Activity	Fort	San	Acoma	Laguna	Papago
	Apache	Carlos			
Working	44.1%	37.5%	40.8%	44.8%	26.7%
With a job but not at work	0.0	1.4	0.0	0.4	0.5
Looking for work	3.4	2.3	0.4	2.7	3.7
Keeping house	19.2	28.4	29.2	25.3	30.2
Going to school	12.3	16.6	16.3	11.9	11.4
Unable to work	18.4	9.5	7.1	8.1	11.6
Retired	0.9	2.9	2.1	4.6	7.1
Other	1.5	1.4	4.2	2.3	8.7
Number in survey	533	349	240	261	378

SOURCE: Indian Manpower Resources In the Southwest: A Pilot Study

The labor force participation rates on the five reservations indicated that Indians in almost every age group participated at a lower rate than the U.S. rate. On all the reservations, the 16 to 19 year old age group was characterized by the lowest labor force participation rates relative to the U.S. rate. The participation rate for the next two age groups 20 to 29, and 30 to 39 are the highest of any age groups. However, the consecutive age groups following the 30 to 39 age group exhibit decreasing labor force participation in contrast to the pattern for the United States, as a whole, which has increasing labor force participation throughout the 16 to 59 age range. (See Table B)

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Table B

Civilian Labor Force Participation Rates by Reservation
Compared with United States Rates

Total (Percentage by Age Group)

Age Group	Fort		San		U.S.
	Apache	Carlos	Acoma	Laguna	
16-19	25.0%	12.2%	9.4%	22.7%	44.2%
20-29	59.4	43.3	42.9	51.8	67.0
30-39	57.5	65.9	53.2	72.2	70.3
40-49	52.1	44.4	57.2	54.5	73.4
50-59	45.5	37.2	46.2	60.7	74.2
60 and over	26.9	11.5	29.8	16.1	29.5
All groups	47.3	39.1	40.0	47.3	59.4

SOURCE: Indian Manpower Resources In the Southwest: A Pilot Study

Indians on four of these reservations begin dropping out of the labor force in their late thirties. The one exception is the Acoma Reservation. The labor force participation rate for each age group up to the 40-49 age range increases and then decreases somewhat in the 50-59 age group. The total United States rates are characterized by increasing participation up to the sixties. There is a particularly large difference between the Papago labor force participation rates for people in their forties and fifties and the U. S. rates for these age groups.

Participation rates among Indian females were lower than comparable U. S. rates, but the pattern by age groups was similar. The greatest difference between the female rates on these reservations and the female rates for comparable United States rates is found in the

Table C

Female Civilian Labor Force Participation Rates: By Reservation
Compared with Total United States Rates (Percent by Age Group)

Age Group	Fort		San		Laguna	Papago	U.S.
	Apache	Carlos	Acoma	Carlos			
16-19	15.9%	13.0%	0.0%	30.8%	6.6%	37.4%	
20-29	42.5	27.8	22.2	45.2	38.7	49.2	
30-39	27.3	38.6	23.1	44.4	24.5	45.2	
40-49	20.6	17.7	26.7	37.0	10.8	52.2	
50-59	37.5	21.7	28.0	37.5	7.0	55.9	
60 and over	2.3	4.0	9.1	38.5	26.7	17.8	
<u>All age groups</u>	<u>25.6</u>	<u>22.7</u>	<u>18.8</u>	<u>33.6</u>	<u>18.6</u>	<u>41.5</u>	

SOURCE: Indian Manpower Resources In the Southwest: A Pilot Study

a zero participation rate for females should be noted. For all reservations, Indian labor force participation rates for older women are lower than the comparable rates for the U. S. (See Table C)

The participation rate for all age groups is usually lower for reservations than for the United States. Labor force participation rates are highest for all men in the U. S. in the 30 to 49 year old age group. Rates for both younger and older Indian male age groups are generally lower than the U. S. rate. While participation rates for the U. S. as a whole tend to increase as the age group grows older, the pattern for the five reservations is relatively stable. (See Table D)

Table D

Male Civilian Labor Force Participation Rates: By Reservation
And United States

Age Group	Fort		San		Laguna	Papago	U.S.
	Apache	Carlos	Acoma	Carlos			
16-19	37.5%	11.5%	21.4%	11.1%	8.7%	51.4%	
20-29	75.3	61.3	68.2	60.0	58.1	88.0	
30-39	86.2	95.1	90.5	100.0	77.1	97.8	
40-49	79.5	90.0	100.0	82.4	56.5	96.3	
50-59	50.0	55.0	78.6	91.7	41.9	92.3	
60 and over	52.6	18.5	48.0	26.7	28.0	44.2	
<u>All age groups</u>	<u>68.2</u>	<u>57.6</u>	<u>66.4</u>	<u>63.3</u>	<u>42.5</u>	<u>79.7</u>	

SOURCE: Indian Manpower Resources In the Southwest: A Pilot Study

Exhibit No. 8—Continued

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Since many Indians did not ever consider themselves in the labor force, the IMRS surveyed the reasons for this phenomena. The most frequently mentioned reason was related to family responsibilities. Of those not seeking work on the San Carlos and Acoma Reservations, 48 percent listed family responsibilities as a reason for not seeking work. This response is related to a lack of desire to leave the reservation to work. (Table E)

Another important reason for not seeking work was related to health and physical handicaps. Over 25 percent of the respondents on the Fort Apache, San Carlos, and Laguna Reservations listed this reason.

A significant number of respondents indicated a lack of necessary schooling, training or experience as a reason for not seeking work. Over 15 percent of the Indians interviewed on the Fort Apache, San Carlos and Laguna Reservations indicated this as their primary reason for not working.

Table E
Reasons Given For Not Seeking Employment: By Reservation

Reason	PERCENT OF THOSE NOT IN LABOR FORCE				
	Fort Apache	San Carlos	Acoma	Laguna	Papago
Believes no work is available	15.2%	2.6%	1.7%	10.6%	4.0%
Couldn't find work	10.0	2.7	0.0	4.5	7.0
Lacks necessary schooling, training	16.1	15.4	2.5	17.7	10.5
Employers think they are young or too old	15.2	1.7	2.5	14.2	15.4
Personal handicap	7.1	12.8	0.8	5.3	5.3
Can't arrange for child care	13.7	8.7	1.7	10.6	8.3
Family responsibilities	19.0	47.7	47.5	37.5	37.7
In school or other training	9.5	12.8	19.2	14.3	9.6
Ill health or physical handicap	25.6	27.5	15.0	25.0	19.7
Other	13.7	8.7	12.5	12.5	13.6
Don't know	13.7	2.0	3.3	12.7	4.0
Number in sample	211	149	120	113	228

SOURCE: Indian Manpower Resources In the Southwest: A Pilot Study

Exhibit No. 8—Continued

12

People may withdraw from the labor market because they feel that the chances of finding a job are very small. On the Fort Apache Reservation, over 15 percent of the respondents believed that no work was available. On the Laguna Reservation, almost 11 percent felt that work was not available. These figures are considerably higher than those for the other three reservations.

On all five reservations, over 30 percent of those who were not employed during the year prior to the survey had never been employed. The rates for the Fort Apache and San Carlos Reservations were especially high. A large number of respondents also indicated that they had not worked for five or more years. Seventy-Five point nine percent of the people surveyed on the Fort Apache Reservation,

Table F
Time of Last Employment of Those Not In Labor Force; By
Reservation

Time	PERCENT RESPONDING				
	Fort Apache	San Carlos	Acoma	Laguna	Papago
Within past 12 months	7.1	2.9	2.5	13.6	4.8
1-2 years ago	8.5	4.1	1.7	7.3	4.8
2-3 years ago	4.5	2.9	4.2	3.6	3.4
3-4 years ago	2.2	2.3	0.9	1.8	3.9
4-5 years ago	1.8	0.6	4.2	0.9	6.1
5 or more years	11.6	11.7	27.1	39.1	30.4
Never worked	64.3	75.4	59.3	33.6	46.5
Total	100.0	99.9	99.9	99.9	99.9
Number	224	171	118	110	230

SOURCE: Indian Manpower Resources In the Southwest: A Pilot Study

and 86.4 of those surveyed on the Acoma Reservation had never worked or had not worked for five or more years. The rates for the other reservations were 87.1 percent for the San Carlos Reservation, 72.7 percent for the Laguna Reservation, and 76.9 percent for the Papago Reservation. A large proportion of the Indian populations on these reservations had been isolated from the labor market over a long period of time. (Table F)

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Employment on these reservations was not likely to be year-round. Only 44.1 percent of all those interviewed who were employed on the Fort Apache Reservation indicated that they worked year-round. The rates for the other reservations .

Table G
Usual Type of Employment: By Reservation

Type of Employment	PERCENT OF WORKERS				
	Fort Apache	San Carlos	Acoma	Laguna	Papago
Year-round	44.2%	52.1%	61.6%	71.5%	46.3%
Seasonal	28.9	27.8	25.0	11.0	33.6
Irregular	26.9	20.1	13.4	16.8	20.2
Total	100.0	100.0	100.0	99.3	100.1
Number	301	169	112	136	134

SOURCE: Indian Manpower Resources In the Southwest: A Pilot Study

were higher, but the incidence of seasonal and irregular employment was also higher. For example, on the Papago Reservation, 53.8 percent of the respondents indicated that they were employed in seasonal or irregular work. On the Acoma Reservation 38.4 percent were employed less than 12 months a year. (Table G)

When Indians were employed on the reservations, they generally worked 35 hours per week or more. Only fifteen percent or less of those employed, worked less than 40 hours. Over 50 percent on each reservation worked the standard 40 hours per week. Approximately 20 percent on each reservation worked more than the normal 40 hours. On some reservations over 5 percent revealed that their jobs required 60 or more hours per week. (Table H)

Exhibit No. 8—Continued

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Table H

Hours Per Week Usually Worked by Employed: By Reservation

Hours	Fort Apache	San Carlos	Acoma	Laguna	Papago
1-14	3.3%	5.3%	3.5%	10.9%	5.8%
15-29	1.9	5.3	3.5	3.6	6.6
30-34	5.3	5.3	4.4	1.5	3.7
35-39	5.0	7.6	4.4	0.7	3.7
40	65.8	67.3	65.8	73.2	51.1
41-48	12.0	5.3	14.0	4.4	8.7
49-59	2.0	2.3	3.5	2.2	10.9
60 or more	4.7	1.8	0.9	3.6	9.5
Total	100.0	100.2	100.0	100.1	100.0
Number	301	171	---	138	137

SOURCE: Indian Manpower Resources In the Southwest: A Pilot Study

A large number of employed Indians indicated that their primary source of job training was on-the-job training. Over 50 percent of the respondents noted that they learned their jobs after they were employed. Government training programs and formal schooling accounted for most of the skill training prior to employment. On the San Carlos Reservation, 19.8 percent of those interviewed indicated that their primary source of training was from OEO and BIA sponsored manpower training programs. Only on the Laguna Reservation was military training significant source of job training. On the other reservations, training derived from the armed forces was minimal. A significant number of those interviewed by IMRS, indicated that self-taught skills and instruction from friends and relatives were important sources of initial training.

IMRS also found that unions had little or no impact on the five reservations. This finding is not surprising considering the isolation of the reservations and the heavy concentration of employment in government work. In addition, little employment is available near these reservations where Indians might encounter unions.

In conclusion, considerable unemployment and underemployment existed on the five reservations. To a large extent, seasonal or irregular work characterized the employment situation. What stability existed in employment, apparently came only from government or service related jobs.

FEDERAL EMPLOYMENT OF INDIANS IN NEW MEXICO AND ARIZONAOverview

American Indians are well represented in Federal employment in Arizona and New Mexico. In 1971, Indians were in 13.8 percent of all Federal jobs in New Mexico and 15.0 percent of all Federal jobs in Arizona.^{13/} However, a large percentage of these Indian employees were concentrated in the lower grade and wage board levels. For example, while Indians made up 17.9 percent of all the Federal employees in the General Schedule (GS) pay system in Arizona, 54.8 percent of these employees were in grades GS-1 through 8. In New Mexico, American Indians were 14.5 percent of all the employees in the GS pay system, yet 49.3 percent were concentrated in GS-1 through 8.^{14/} (Tables 2 and 3)

Similarly, Indians comprised 20.0 percent of all the wage board workers in Arizona; but 40.7 percent of all the Indian regular nonsupervisory employees, 68.0 percent of the Indian regular wage employees, and 19.0 percent of all the Indian regular supervisory employees were concentrated in wage levels 1 through 3. Over 50 percent of all Indians in other wage systems were making below \$6,999 annually. In New Mexico, Indians constituted 17.5 percent of all the wage board employees, but almost 36 percent of all the Indian employees in the nonsupervisory category, 25.6 percent of the Indian regular wage employees, 4.5 percent of the regular supervisors, were in grades 1 through 3. Over 27 percent of all the

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Indian employees in other wage systems were making less than \$6,999 ^{15/} a year.

From 1967 to 1971 Indian employment in the Federal Government in New Mexico and Arizona increased. In 1967, 10.8 percent of all Federal employees in New Mexico were classified as American Indians. They held 26.6 percent of all the classified jobs at grades GS-1 through 4, but only 4.1 percent in grades GS-9 through 11, and 2.6 percent in grades GS-12 to 18. At the same time, they constituted 15.7 percent of all the wage board workers in the State, but made up 29.5 percent of all the blue-collar workers earning less than \$5,499 annually; and, only 5.4 percent of those making \$8,000 or more.

By 1971, 13.8 percent of all Federal employees in New Mexico were identified as American Indians. They held 36.0 percent of all the GS-1 through 4 positions, and 5.6 percent of the classified jobs in grades GS-9 through 11, an increase of 1.5 percent of 1967. At the same time, Indians held 3.7 percent of all the GS jobs in grades 12 to 18, an increase of 1.1 percent. In the wage board category, Indians comprised 17.5 percent of all the wage board employees, an overall increase of 1.8 percent.

In Arizona, a similar pattern occurred. In 1967, Indians comprised 14.5 percent of all the Federal employees in the State; compared with 15.0 percent of the total Federal employment in 1971. However, the number of Indians concentrated in lower grades seemed to increase. For example, in 1967, 34.7 percent of all the Indians in the GS pay system were in grades GS-1 through 4. In 1971, 42.2

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percent were in grades GS-1 through 4; the number of Indian employees in classified jobs at grades GS-9 through 11 increased to 5.9 percent in 1971 -- an overall increase of 1.5 percent. The number of American Indians in grades GS-12 through 18 declined slightly from 5.7 percent in 1967 to 4.4 percent in 1971. In the wage board category, Indians constituted 20.0 percent of all the wage board employees in 1971, a slight decrease from 1967.

Indian Employment in the Bureau of Indian Affairs

The largest Federal employer of Indians in the region is the Bureau of Indian Affairs. In 1971, the BIA employed a total of 2,829 employees in the GS pay system and 1,112 in the wage board system in Arizona. Of this total, Indians constituted about 60.6 percent of all GS employees, and 85.6 percent of all wage board employees. In New Mexico, a total of 2,854 GS employees and 699 wage board employees were employed by the BIA. Indians were 56.2 percent of all the GS employees, and 86.9 percent of all the wage board employees.

Although Indians comprised the majority of all GS and wage board employees hired by the BIA, most of these Indian employees were concentrated in the lower grade and wage board categories. For example, in Arizona, Indians comprised 81.2 percent of all the GS personnel employed in Grades 1 through 5, while white personnel constituted only 7.3 percent of all the GS employees in these grade levels. On the other hand, Indians were only 23.6 percent of all

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classified employees in grades GS-11 through 15, while whites constituted slightly over 70 percent of all employees in these grades. (Table 4)

The same grade distribution appeared to be true for Indian employees in New Mexico. Indians constituted 89.5 percent of all classified employees in grades GS-1 through 5; while whites were only 7 percent of all employees in these grades. Conversely, Indians comprised only 17.2 percent of all classified GS employees in grades GS-11 to 15, while whites constituted 74.5 percent of all employees in these grades. (Table 5)

In Arizona, almost 80 percent of all the Indians employed by the Bureau of Indian Affairs in the GS pay system were employed in grades 1 through 5. In New Mexico, approximately 75 percent of all the Indians employed by the BIA in the GS pay system were concentrated at or below the GS-5 grade level. On the other hand, only 11.3 percent of all white employees in Arizona, and 9.5 percent of all the white GS employees in New Mexico were employed in these grades.

In Arizona, slightly over 85 percent of all wage board workers employed by the BIA in 1971 were classified as American Indian and only 12.5 percent were identified as white. Approximately 60 percent of all the Indian wage board employees earned less than \$9,000 a year. At the same time, only 9.3 percent of the white blue collar workers made less than \$9,000 annually. (Table 6) Conversely, over 90 percent of all the white wage board employees earned more than \$9,000 annually; whereas, only 39.1 percent of all the Indian wage board workers made more than \$9,000 a year.

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In New Mexico, American Indians made up 85.5 percent of all the wage board workers employed by the BIA. However, over 70 percent of these Indian wage board employees earned less than \$9,000 annually. At the same time, approximately 85 percent of all the white wage board workers employed by the BIA earned more than \$9,000 a year. (Table 7)

Figures from BIA Administrative Areas show similar grade and wage level distribution among BIA employees in 1972. For example, the BIA employed 931 GS employees in the Albuquerque Area. Indians were 57.5 percent of this group. Approximately 69 percent of all Indians employed by the Albuquerque Area Office in the GS pay system were concentrated at or below grade level 5; whereas, only 9.6 percent of all the non-Indian GS employees were located in these grades. On the other hand, slightly over 50 percent of all non-Indian GS employees were located in grades GS-11 through 15, while only 8 percent of all Indian GS employees were in these grades. (Table 8)

The Navajo Area Office employed a total of 3,796 GS employees. Of this total, 2,293 were Indian, and 1,503 were classified as non-Indian. Indians constituted approximately 60 percent of all the GS employment in this area office; however, 82.5 percent of these Indian employees were located in grades GS-1 through 5. Only 13.5 percent of all the non-Indian employees were in these grades. About 22 percent of the non-Indians were employed in grades

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GS-11 through 15; only 4.3 percent of the Indian employees were in these grades. Most of the Indian employees were concentrated in the GS-3,4 and 5 grades; whereas, most of the non-Indian employees were employed as GS-9's. (Table 9)

The same grade level distribution exists for the Phoenix Area Office. One thousand two hundred and eighteen GS employees were employed by the Phoenix Area Office. About 50.6 percent of these were Indians. Approximately 70 percent of the Indian employees were in grades GS-1 through 5; whereas, only 16 percent of all non-Indian GS employees were in these grades. Over 40 percent of all non-Indian GS employees were in grades GS-11 through 15. On the other hand, only about 10 percent of the Indian employees were in these grades. The majority of all Indian employees were in grades GS-3, 4 and 5; whereas, most of the non-Indians were concentrated in grades GS-9 and 11. (Table 10)

In wage board jobs in these Area Offices, over 50 percent of the Indian employees earned less than \$9,000 a year. In the Phoenix Area Office, 332 Indians and 127 non-Indians were employed as wage board workers. Over 51 percent of all Indian wage board employees earned less than \$8,999 annually; whereas, only 13.3 percent of the non-Indian employees made less than this wage. On the other hand, over 86 percent of all the non-Indian wage board employees earned more than \$9,000 a year, and only 52.1 percent of the Indian wage board employees made more than \$9,000 annually. (Table 11).

In the Navajo Area, a total of 1,376 wage board workers were employed by the BIA. Of this total, 1,177 were classified as Indian, and only 199 were identified as non-Indian. However, 67 percent of these Indian wage board workers earned less than \$9,000 a year; whereas, only 16 percent of the non-Indian wage board workers made less than \$9,000 annually.

The same wage level distribution appeared for the Albuquerque Area. In 1972, 170 Indians and only 19 non-Indians were employed as wage board workers. Over 71 percent of the Indian employees made less than \$9,000 a year; while only 37 percent of the non-Indian wage board employees earned less than this wage.

These statistics indicate that while Indians constitute a majority of all the GS and wage board employees in the Bureau of Indian Affairs in Arizona and New Mexico, they are disproportionately concentrated in the lower grade and wage board levels.

Indian Preference and the Bureau of Indian Affairs

Indian preference applies specifically to the employment of American Indians in the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS). According to Congressional mandate

An Indian has preference by law on initial appointment (in the Bureau of Indian Affairs and in the Indian Health Service) provided the candidate has established proof that he is one-fourth or more Indian and meets the 16/ minimum qualifications for the position to be filled.

In other words, any Indian applicant for a position in the BIA or IHS, provided that he is one-fourth or more Indian, and has the

basic qualifications for the position for which he has 17/ applied, has preference over any non-Indian applicant.

This preference applies not only to initial employment, but also to re-employment, reductions-in-force, and promotions. The Bureau of Indian Affairs did not interpret Indian Preference to cover "promotions" until June 23, 1972.

The Indian Health Service, which operates under the same preference law, 18/ had previously extended Indian preference to cover promotions and other personnel matters. In accordance with this interpretation, the IHS issued a policy statement dated May 26, 1970 which stated:

It is... the policy of the Indian Health Service to extend administratively the principle of Indian preference to promotion and career development. Therefore, where preference will be extended to Indians in the area of service placements, training, career development and promotions, whenever possible, within the precepts of good management. 19/

At this time, Indian preference is limited to the BIA and the IHS. No more than one-half of one percent of all Federal positions are subject to Indian preference.

The original purpose of this preference clause was to assist Indians toward self-government by providing the education, training, and opportunity necessary to insure an adequate and

acceptable life. Implicit in the self-government concept was that Indians should help make policy decisions within the Bureau. It was originally thought by some that Indian preference would be all inclusive, eventually leading to the creation of an all Indian Bureau of Indian Affairs.

At present, about 46 percent of the positions in the BIA (nationally and locally) are filled by non-Indians, principally in the higher GS levels. It has been alleged that the BIA has created a system which prevents Indians from advancing to higher levels in the Bureau. In an article entitled "No Room at the Top", it was concluded that the BIA has, in effect, discriminated against its own Indian employees in employment, promotions and training, even though it has a clear legislative mandate, dating from the 1880's, requiring that Indians be given absolute employment preference within the Bureau. At the present time, because of various and often conflicting interpretations of Indian preference, and to some extent because of Civil Service rules and regulations it is alleged that qualified Indians have found it difficult to advance within the Bureau. 21/

The statistics on New Mexico and Arizona, presented above, point out that while many Indians are employed by the BIA, they are concentrated in the lower grade and wage board

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levels. It should also be emphasized that Indian preference is a policy applicable only to the BIA and the IHS.

Indian Employment in Other Federal Agencies in
New Mexico and Arizona

The purpose of this section is to briefly analyze the employment patterns of a number of Federal agencies having staff in Arizona and New Mexico and to determine the over-all distribution of American Indian employees in these agencies as of November 1971.^{22/}

Department of Health, Education and Welfare (DHEW)

This agency employed a total of 2,284 employees in Arizona, a majority of whom were in the Indian Health Service. The number of American Indian working for DHEW in the State totaled 995. Seven hundred and seventy-four Indians were employed in the GS category and 221 were employed in various other wage systems.

In New Mexico, DHEW employed a total of 1,457 persons. Of these, 768 were American Indians. Five hundred and thirty-two were GS employees, 169 were wage board workers, and 67 were employed in other pay systems.

Although DHEW employed many American Indians in both states, a large majority of these employees were concentrated in the lower grade and wage levels. For example, in New Mexico,

American Indians comprised 81.8 percent of all the GS employees in grades GS-1 through 4, 44.6 percent of all the employees in the GS-5 through 8 grades, 17.5 percent of all the employees in the GS-9 through 11 grades, and only 16.3 percent of all the employees in the GS-12 through 18 grades.

In Arizona, a similar pattern emerged. About 80 percent of all the employees in the GS-1 through 4 grades were American Indians, and only 13.4 percent of all the GS employees in grades 9 through 11 were Indians.

In wage board positions, most of the Indian employees were in the lower wage levels. For example, in Arizona 81.1 percent of all the employees in the WG-1 through 3 wage grade were Indian; whereas, only 2.8 percent of all the white employees were in these wage levels. At the same time, 91.9 percent of all the blue collar employees in the WG-4 through 6 wage levels were Indians. In New Mexico, Indians constituted 88.8 percent of all the regular nonsupervisory employees. However, 98.6 percent of all the employees in the WG-1 through 3 wage levels were Indians, and only 1.4 percent of all the white employees were in these wage categories.

Department of the Interior

The Department of the Interior employed a total of 5,018 persons in New Mexico, and 5,692 persons in Arizona. Indians constituted 47.4 percent of the jobs in New Mexico, and 51.6 percent of the jobs in Arizona.

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While Indians represented a relatively large part of the total employment in this department in both states, most of the Indians were in the lower grade and wage levels. For example, in New Mexico 79.6 percent of all the GS employees in the GS-1 through 4 category were identified as Indians; while only 10.1 percent of all the white employees were in these grades. A similar situation existed in Arizona where 86.4 percent of all the employees in the GS-1 through 4 grades were Indians, and only 11.9 percent were classified as white.

In the wage system there is a more even distribution of personnel. While Indians were 84 percent of all the employees in the WG-1 through 3 wage categories in New Mexico, they also made up 41.1 percent of all the employees in the WG-10 through 12 category. In Arizona Indians experienced a similar distribution in the wage board system.

Post Office Department

The employment of American Indians in the Post Office in both states was minimal. For example, in New Mexico, only 34 Indians were employed by the Post Office out of a total employment of 2,578. In Arizona the same number of Indians were employed out of a total work force of 5,093. Most of these Indian employees were concentrated in the PFS-1 through 5 grades, which includes 4th class postmasters and rural carriers.

Department of Housing and Urban Development (HUD)

In 1971, HUD employed a total of 77 employees in New Mexico, and

136 employees in Arizona. In New Mexico only 4 Indians were employed by this agency in the GS pay system. In Arizona only one Indian out of a total staff of 136 was employed by HUD.

Department of Agriculture

Although the Department of Agriculture employed a substantial number of people in both states, American Indians were only a small part of the total employment. In New Mexico, out of a total employment of 1,363, only 27 employees were identified as American Indian. Of this total, 26 were employed in the GS pay system, but 15 of these were in the GS-1 through 4 grade levels. In Arizona, Indians were only 4.8 percent of a total work force of 1,439. Of the 69 Indian employees employed by this department, 59 were classified as GS employees. However, 51 of the Indian GS employees were in GS-1 through 4 grade levels.

Department of the Army

The Army employed a total of 4,498 civilian employees in Arizona and 5,154 civilians in New Mexico. However, Indians constituted only 15 percent of all the civilian employees in New Mexico and Arizona. Twenty-eight Indians were employed by the Army in New Mexico, and 24 were employed in Arizona.

Department of the Air Force

The Air Force has a total civilian employment of 4,100 in New Mexico, and 4,410 in Arizona. Only 17 Indians were employed by the Air Force in New Mexico, and 21 were employed in Arizona. American Indians comprised less than one percent of the total

civilian employment in the Air Force in both states.

To summarize, with the exception of the Department of the Interior, and the Department of Health, Education and Welfare, the number of Indians employed by Federal agencies in both states was minimal. Those Indians that were employed in these agencies were usually concentrated in the low grade and wage levels.

EMPLOYMENT PATTERNS IN STATE AND LOCAL GOVERNMENTNew Mexico

In 1971 New Mexico State agencies employed only 198 Indians out of a total state employment of 10,557. Only 20 State agencies out of a total of 73 employed any Indians.^{23/} The majority of Indians were employed in three agencies -- the Employment Security Commission, the Department of Health and Social Services, and the Highway Department.

The median salary range for all State employees was between \$240 and \$660 per month. (Table 12) The median monthly salary for Indian employees was between \$400 and \$499 per month. For whites, the median monthly salary was between \$500 and \$599 per month. Only 6.6 percent of all Indians employed by the State were receiving between \$600 and \$699 per month, while 17.8 percent of the whites, 10.1 percent of the Spanish Surnamed, and 12.6 percent of the black employees were in this pay range. (Table 13)

Forty-seven and eight tenths percent of all State employees were above the median salary range. Over 66 percent of the white State employees received a salary that was above the median. Only 32 percent of the Indian employees, 34.9 percent of the Spanish Surnamed, and 27.9 percent of the black employees were above the median. (Table 14)

The median educational level for all State employees was 12 years. Eighty-nine and one tenths percent of all State employees had at least a 9th grade education. Over 94 percent of the white employees

had at least a 9th grade education, while only 81.3 percent of all Indian employees achieved this level. In fact, Indians had a lower educational attainment level than any of the other groups. This disparity becomes more apparent at the 12th grade level. Slightly more than 78 percent of all of all State employees achieved a 12th grade education, yet only 69 percent of all Indian employees had a high school education.

Over 85 percent of all Indian employees lived in four counties -- Bernalillo (40), McKinley (55), San Juan (38), and Santa Fe (37). In Bernalillo County, Indians occupied only 40 positions out of a total of 1,666 State jobs. In McKinley County, while Indians comprised about 54 percent of the population, they held only 41 percent of all the State jobs. In summary, while Indians made up 7.2 percent of the State's population, they comprised only 1.9 percent of the total State employment in New Mexico. (Table 16)

Arizona

According to the Arizona Civil Rights Commission, American Indians constituted only 1.6 percent of the total State employment in 1971. Indian employment decreased from 358 or 1.7 percent of the State employment in 1969, to 306, or 1.5 percent of the total in 1970. In 1971, Indian employment in Arizona State agencies increased to 418, or 1.6 percent of the total. (Table 17)

Approximately 84 percent of all Indians employed by the State government were concentrated in seven agencies: Arizona State University, the State Education Department, Employment Security Commission, Highway Department, Northern Arizona University, University of Arizona, and the Welfare Department. (Table 18) Of the 418 Indians employed by the various State agencies, 264 or 63.1 percent were located in white collar, or skilled jobs; while 154 were employed in low skill occupations. However, Indians made up only 1.2 percent of all employees in the white collar jobs, although they comprised 2.8 percent of all the state employees in the OG-2 or blue collar classifications.

To summarize, both Arizona and New Mexico State agencies employed few Indians. Those Indians that were employed by the States were generally in low-skill occupations. Even on a percentage basis, Indians were a small part of the total employment. In New Mexico, Indians were 7.2 percent of the State's population, yet only occupied 1.9 percent of the State jobs. In Arizona, Indians were 5.4 percent of the total population, yet occupied only 1.6 percent of the State jobs.

Local Government Employment In Arizona

The employment of Indians in local and municipal governments in Arizona appears to be minimal. In Phoenix, only 49 Indians were employed in 1971 out of a total municipal employment of 5,020. Indians were less than one percent of the total municipal employment in 1971. (Table 19)

In Phoenix, about 65 percent of all Indians employed by the city were in the Water and Sewers Department. More than half were classified as semi-skilled operatives, 2 were classified as unskilled laborers, and five were identified as skilled laborers. The vast majority of Indians employed by the city were classified as semi-skilled or unskilled. (Table 20)

In Tucson, Indians are a small part of the total municipal employment, less than one percent. (Table 21)

Indian Employment in Public Schools in Arizona and New Mexico

Indians represent a small proportion of the total employment in school districts throughout Arizona and New Mexico.

In 1972 the Arizona Department of Education reported that out of a total public school enrollment of 468,927 pupils, 4.85 percent or 22,754 were American Indians. Of the 37,722 certified and non-certified school employees reported in various categories, only 791 or 2.10 percent were Indians. American Indians were 3.8 percent of 634 of all the non-certified employees in various categories; and, 0.77 percent of 157 of those employed in the certified category. ^{25/} (Table 22)

Eighty-four percent of all the non-certified Indian school employees were employed in four job categories -- transportation, cafeteria work, custodian services, and teacher aides. More important, Indians constituted only 0.48 percent of all the certified teachers, and 1.47 percent of all the guidance counselors. The majority of Indian school employees were located in four

counties -- Apache, Coconino, Gila and Navajo. Even in these counties Indian employees were only a small proportion of all school employees. Over 70 percent of the population in Apache County was Indian, yet Indians were only 28 percent of the total school employment in that county. In Navajo County, Indians were 48 percent of the population, yet they were only 14.6 percent of all the school employees. In Coconino County, almost 25 percent of the population was Indian; only 14 percent of all the school employees in that county were Indians. In Gila County, Indians were 8.3 percent of all the school employees in the county, yet they were over 15 percent of the county's population. (Table 23)

In Apache County, 67.1 percent of all the pupils enrolled in public schools were Indian, yet only 15 Indian teachers out of a total of 313 were employed by the various schools. Navajo County had 2,798 Indian pupils attending public schools, yet only 7 teachers out of 422 were Indians. About 23 percent of the total school enrollment in Coconino County were Indians, yet only 2.3 percent of the teachers were Indian. In Gila County, almost 15 percent of the student enrollment in the public schools were Indians, but less than one percent of all the teachers were Indians. (Table 24)

Apparently, a similar situation exists in New Mexico. In 1968, there were approximately 16,965 ^{26/} Indian pupils enrolled

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in 14 school districts in Bernalillo, McKinley, Rio Arriba, Sandoval, San Juan and Valencia Counties. Indian pupils comprised about 28 percent of the school enrollment in these districts. ^{27/} However, only 1.6 percent of all the teachers employed in these school districts were Indian. (Table 25)

None of the districts had more than 10 percent of its teaching staff as Indians. Even in those school districts having a substantial Indian enrollment, the number of full time Indian teachers was low. For example, during the 1968-69 school year, over 75 percent of the pupil enrollment in the Central Consolidated School District located in San Juan County were Indians, yet only 9.6 percent of the teachers were Indians. In the Gallup School District located in McKinley County, Indian pupils were over 50 percent of the total enrollment; yet, only 5.1 percent of the teachers were Indians. In the Bernalillo School District located in Sandoval County, 47.5 percent of the total school enrollment were Indians, yet only 2.6 percent of the teachers employed by this district were Indians.

To summarize, Indians were only a very small part of all the school employees, in both Arizona and New Mexico. More significant, however is that Indians comprised an extremely small percentage of the teachers and counselors.

PRIVATE EMPLOYMENT PATTERNS

According to the Equal Employment Opportunity Commission in 1970, approximately 2,968 Indians out of a total surveyed labor

force of 77,335 were employed in 466 separate business units in New Mexico. Indians were 3.8 percent of the State's labor force. ^{28/} In Arizona, 3,152 Indians out of a surveyed labor force of 196,899 were employed in 982 business units. Indians comprised 1.6 percent of the State's labor force. ^{29/}

A large proportion of the surveyed Indian labor force was employed in occupations of low economic status. For example, of the 2,968 Indian employees in New Mexico, 1,523 were employed as operatives, 246 were employed as unskilled laborers, and 222 were employed in various service occupations. (Table 26) In Arizona, the number of Indians employed in low status jobs was 2,262 or approximately 72 percent of all Indians employed in private business. (Table 27)

In a special survey of Indian Employment in Phoenix, Arizona ^{30/} and Albuquerque, New Mexico, ^{31/} it was noted that a significant portion of the Indian labor force were employed in low skilled occupations.

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For example, 47 companies were surveyed in Phoenix having a total employment of 36,576 persons in 1971. Of this total, 26,237 were males and 10,339 were females. Minorities made up about 16 percent of the labor force. American Indians comprised less than one percent of the minority employment, and only .008 percent of the entire employment in these 47 companies. (Table 28)

Twenty-seven companies employing a total of 14,540 persons were included in the Albuquerque survey. (Table 29) Of this total, only 471 Indians were employed by these companies. Indians comprised only 3.2 percent of the labor force, and approximately 11 percent of the minorities. A substantial number of Indians were employed in low skill occupations. Almost 65 percent of all Indian males and approximately 86 percent of all females were employed as operatives, laborers or service workers.

To summarize, two basic conclusions can be derived from the data. First, American Indians constituted only a very small part of the off-reservation labor force. Second, those Indians that are employed in off-reservation

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jobs tend to be concentrated in low-skill and low-paying occupations. These conclusions appear to be valid for both Arizona and New Mexico.

TABLES

Exhibit No. 8—Continued

Table 1
Reservation Employment By Industry Class
(Number and Percent)

Reservation Industry Class	Fort Apache		San Carlos		Papago		Acoma		Laguna	
	No.	%	No.	%	No.	%	No.	%	No.	%
Agriculture, forestry and fisheries	30	8.6	32	16.6	57	30.2	12	9.3	10	5.9
Mining	-	-	5	2.6	3	1.6	21	16.3	22	12.9
Contract construction	6	1.7	4	2.1	11	5.8	9	7.0	7	4.1
Manufacturing	70	20.0	7	3.6	4	2.1	8	6.2	33	19.4
Transportation & related services	1	0.3	-	-	-	-	4	3.1	4	2.4
Wholesale and retail trade	22	6.3	17	8.8	7	3.7	23	17.8	5	2.9
Services	52	14.9	23	11.9	44	23.3	13	10.1	21	12.4
Government	69	48.3	105	54.4	63	33.3	39	30.2	66	38.8
Total	350	100.1	193	100.0	189	100.0	129	100.0	168	98.8

SOURCE: Indian Manpower Resources In the Southwest: A Pilot Study.

Table 2
1971 MINORITY GROUP STUDY
ARIZONA

FULL-TIME EMPLOYMENT AS OF NOVEMBER 30, 1971

PAY SYSTEM	TOTAL FULL-TIME EMPLOYEES	NEGRO		SPANISH SURNAMED		AMERICAN INDIAN		ORIENTAL		ALL OTHER EMPLOYEES	
	NUMBER	NUMBER	PCT	NUMBER	PCT	NUMBER	PCT	NUMBER	PCT	NUMBER	PCT
TOTAL ALL PAY SYSTEMS..	27,542	726	2.6	2,405	9.0	4,125	15.0	111	.4	20,095	73.0
TOTAL GENERAL SCHEDULE OR SIMILAR.....	15,728	329	2.1	1,004	5.1	2,823	17.9	75	.5	11,697	74.4
GS- 1 THRU 4	4,699	106	2.3	242	5.2	1,981	42.2	12	.3	2,358	50.2
GS- 5 THRU 8	4,401	75	1.7	365	8.3	554	12.6	31	.7	3,376	76.7
GS- 9 THRU 11	4,010	135	3.4	143	3.6	237	5.9	20	.5	3,475	86.7
GS-12 THRU 13	2,183	12	.5	46	2.1	40	1.8	10	.5	2,075	95.1
GS-14 THRU 15	430	1	.2	8	1.9	11	2.6	2	.5	408	94.9
GS-16 THRU 18	5									5	100.0
TOTAL WAGE SYSTEMS.....	6,335	204	3.2	1,040	16.4	1,264	20.0	18	.3	3,809	60.1
TOTAL REGULAR INSUPERVISORY.....	5,035	177	3.5	860	17.1	1,070	21.3	14	.3	2,914	57.9
WG- 1 THRU 3	886	63	7.1	152	17.2	361	40.7	4	.5	306	34.5
WG- 4 THRU 6	1,101	59	5.4	226	20.5	230	20.9	4	.4	582	52.9
WG- 7 THRU 9	1,516	36	2.4	274	18.1	358	23.6	3	.2	845	55.7
WG-10 THRU 12	1,518	19	1.3	206	13.6	121	8.0	2	.1	1,170	77.1
WG-13 THRU 15	14			2	14.3			1	7.1	11	78.6
TOTAL REGULAR LEADER...	314	5	1.6	63	20.1	47	15.0	1	.3	198	63.1
WL- 1 THRU 3	25			3	20.0	17	68.0			3	12.0
WL- 4 THRU 6	33	2	6.1	8	24.2	4	12.1			19	57.6
WL- 7 THRU 9	118	1	.8	29	24.6	23	19.5			65	55.1
WL-10 THRU 12	138	2	1.4	21	15.2	3	2.2	1	.7	111	80.4
WL-13 THRU 15											

SOURCE: Minority Group Employment in the Federal Government: November 30, 1971
U.S. Civil Service Commission SM 70-71D Table 3-4b p.372-373

Exhibit No. 8—Continued

Table 2 (continued)
1971 MINORITY GROUP STUDY

ARIZONA

FULL-TIME EMPLOYMENT AS OF NOVEMBER 30, 1971

PAY SYSTEM	TOTAL FULL-TIME EMPLOYEES	NEGRO		SPANISH SURNAHED		AMERICAN INDIAN		ORIENTAL		ALL OTHER EMPLOYEES	
		NUMBER	PCT	NUMBER	PCT	NUMBER	PCT	NUMBER	PCT	NUMBER	PCT
TOTAL REGULAR SUPERVISORY.....	539	15	2.8	62	11.5	62	11.5			400	74.2
NS- 1 THRU 3	42	5	11.9	12	28.6	8	19.0			17	40.5
NS- 4 THRU 6	71	3	4.2	13	21.1	8	11.3			45	63.4
NS- 7 THRU 9	197	4	2.0	20	10.2	40	20.3			133	67.3
NS-10 THRU 12	195	3	1.5	14	7.2	5	2.6			173	88.7
NS-13 THRU 15	34			1	2.9	1	2.9			32	94.1
NS-16 THRU 17											
NS-18 THRU 19											
TOTAL OTHER WAGE SYSTEM	447	7	1.6	55	12.3	85	19.0	3	.7	297	66.4
UP THRU \$5,499	32	2	6.3	18	56.3					12	37.5
\$ 5,500 THRU \$6,999	87	2	2.3	13	14.9	45	51.7	1	1.1	26	29.9
\$ 7,000 THRU \$7,999	42			4	9.5	18	42.9			20	47.6
\$ 8,000 THRU \$8,999	59	2	3.4	12	20.3	8	13.6			37	62.7
\$ 9,000 THRU \$9,999	154	1	.6	8	5.2	7	4.5	1	.6	137	89.0
\$10,000 THRU \$13,999	73					7	9.6	1	1.4	65	89.0
\$14,000 THRU \$17,999											
\$18,000 AND OVER											
TOTAL POSTAL FIELD SERVICE.....	5,093	170	3.7	630	12.4	34	.7	13	.3	4,226	83.0
PFS- 1 THRU 5*	4,211	173	4.1	334	12.7	25	.6	13	.3	3,466	82.3
PFS- 6 THRU 9	741	10	2.2	68	11.9	8	1.1			629	84.9
PFS-10 THRU 12	118	1	.8	6	5.1	1	.8			110	93.2
PFS-13 THRU 16	21			2	9.5					19	90.5
PFS-17 THRU 19	2									2	100.0
PFS-20 THRU 21											
TOTAL OTHER PAY SYSTEMS	386	3	.8	11	2.8	4	1.0	5	1.3	363	94.0
UP THRU \$6,499	54			10	18.5	3	5.6	1	1.9	40	74.1
\$ 6,500 THRU \$ 9,999	49	1	2.0							48	98.0
\$10,000 THRU \$13,999	198	1	.5	1	.5	1	.5	2	1.0	193	97.3
\$14,000 THRU \$17,999	39	1	2.6							38	97.4
\$18,000 THRU \$25,999	42									40	95.2
\$26,000 AND OVER	4							2	4.8	4	100.0

* INCLUDES 4TH CLASS POSTMASTERS AND RURAL CARRIERS

SOURCE: Minority Group Employment in the Federal Government: November 30, 1971, U.S. Civil Service Commission SM 70-71B Table 3-4b p.372-373

Table 3
1971 MINGRITY GROUP STUDY
NEW MEXICO

FULL-TIME EMPLOYMENT AS OF NOVEMBER 30, 1971

PAY SYSTEM	TOTAL FULL-TIME EMPLOYEES	NEGRO		SPANISH SURNAMED		AMERICAN INDIAN		ORIENTAL		ALL OTHER EMPLOYEES	
	NUMBER	NUMBER	PCT	NUMBER	PCT	NUMBER	PCT	NUMBER	PCT	NUMBER	PCT
TOTAL ALL PAY SYSTEMS..	24,119	368	1.5	6,136	25.4	3,318	13.8	52	.2	14,245	59.1
TOTAL GENERAL SCHEDULE OR SIMILAR.....	16,638	244	1.5	3,008	18.1	2,412	14.5	46	.3	10,928	65.7
GS- 1 THRU 4	4,117	52	1.3	1,014	24.6	1,481	36.0	10	.2	1,560	37.9
GS- 5 THRU 8	4,728	60	1.3	1,229	26.0	628	13.3	15	.3	2,796	59.1
GS- 9 THRU 11	4,189	95	2.3	484	11.6	234	5.6	10	.2	3,366	80.4
GS-12 THRU 13	2,925	33	1.1	260	8.9	57	1.9	7	.2	2,568	87.8
GS-14 THRU 15	656	4	.6	21	3.2	12	1.8	4	.6	615	93.8
GS-16 THRU 18	23									23	100.0
TOTAL WAGF SYSTEMS.....	4,588	81	1.8	1,923	41.9	802	17.5	1		1,781	38.8
TOTAL REGULAR NONSUPERVISORY.....	3,850	70	1.8	1,673	43.5	718	18.6	1		1,388	36.1
WG- 1 THRU 3	654	30	4.6	260	39.8	235	35.9			129	19.7
WG- 4 THRU 6	661	12	1.8	310	46.9	173	26.2			166	25.1
WG- 7 THRU 9	1,081	16	1.5	507	46.9	247	22.8			311	28.8
WG-10 THRU 12	1,371	12	.9	577	42.1	63	4.6			718	52.4
WG-13 THRU 15	83			19	22.9			1	.1	64	77.1
TOTAL REGULAR LEADER...	217	3	1.4	77	35.5	39	18.0			98	45.2
WL- 1 THRU 3	39	3	7.7	18	46.2	10	25.6			8	20.5
WL- 4 THRU 6	23			13	56.5	3	13.0			7	30.4
WL- 7 THRU 9	68			23	33.8	23	33.8			22	32.4
WL-10 THRU 12	85			22	25.9	3	3.5			60	70.6
WL-13 THRU 15	2			1	50.0					1	50.0

Table continued

Table 3 (continued)
1971 MINORITY GROUP STUDY
NEW MEXICO

FULL-TIME EMPLOYMENT AS OF NOVEMBER 30, 1971

PAY SYSTEM	TOTAL FULL-TIME EMPLOYEES	NEGRO		SPANISH SURNAME		AMERICAN INDIAN		ORIENTAL		ALL OTHER EMPLOYEES	
	NUMBER	NUMBER	PCT	NUMBER	PCT	NUMBER	PCT	NUMBER	PCT	NUMBER	PCT
TOTAL REGULAR SUPERVISORY.....	456	7	1.5	141	30.9	38	8.3			270	59.2
WS- 1 THRU 3	44	1	2.3	31	70.5	2	4.5			10	22.7
WS- 4 THRU 6	43			21	48.8	3	7.0			19	44.2
WS- 7 THRU 9	176	4	2.3	46	26.1	29	16.5			97	55.1
WS-10 THRU 12	157	2	1.3	38	24.2	3	1.9			114	72.6
WS-13 THRU 15	32			4	12.5	1	3.1			27	84.4
WS-16 THRU 17	4			1	25.0					3	75.0
WS-18 THRU 19											
TOTAL OTHER WAGE SYSTEM	65	1	1.5	32	49.2	7	10.8			25	38.5
UP THRU \$5,499	9			4	44.4	1	11.1			4	44.4
\$ 5,500 THRU \$6,999	12	1	8.3	9	75.0	2	16.7			2	10.5
\$ 7,000 THRU \$7,999	19			16	84.2	1	5.3				
\$ 8,000 THRU \$8,999	4			2	50.0	2	50.0			17	100.0
\$ 9,000 THRU \$9,999	17			1	33.3					2	66.7
\$10,000 THRU \$13,999	3										
\$14,000 THRU \$17,999	1					1	100.0				
\$18,000 AND OVER											
TOTAL POSTAL FIELD SERVICE.....	2,578	39	1.5	1,196	46.4	34	1.3	3	.1	1,306	50.7
PFS- 1 THRU 5*	2,101	37	1.8	977	46.5	29	1.4	3	.1	1,055	50.2
PFS- 6 THRU 9	402	2	.5	189	47.0	5	1.2			206	51.2
PFS-10 THRU 12	64			24	37.5					40	62.5
PFS-13 THRU 16	10			6	60.0					4	40.0
PFS-17 THRU 19	1									1	100.0
PFS-20 THRU 21											
TOTAL OTHER PAY SYSTEMS	315	4	1.3	9	2.9	70	22.2	2	.6	230	73.0
UP THRU \$6,499	101	2	2.0	5	5.0	69	68.3			25	24.8
\$ 6,500 THRU \$ 9,999	30	1	3.3	2	6.7			1	3.3	26	86.7
\$10,000 THRU \$13,999	135	1	.7					1	.7	133	95.5
\$14,000 THRU \$17,999	23									22	95.7
\$18,000 THRU \$25,999	16			1	6.3	1	6.3			15	93.8
\$26,000 AND OVER	10			1	10.0					9	90.0

* INCLUDES 4TH CLASS POSTMASTERS AND RURAL CARRIERS

SOURCE: Minority Group Employment in the Federal Government: November 30, 1971, U.S. Civil Service Commission
SN 70-71B, Table 3-32A, p.428-429

Exhibit No. 8—Continued

Table 4

Grade Level Distribution of GS Employees by Race - Bureau of Indian Affairs - Arizona 1971

Grade Level	Total	Negro	Spanish Surnamed	Oriental	American Indian	Other
1	77				75	2
2	17				17	
3	403	1	2		393	7
4	704	4	2		664	34
5	300	1	10	1	220	68
6	42				38	4
7	141		1		77	63
8	6				4	2
9	679	72	10	2	123	472
10	9		1		1	7
11	226	16	6		62	142
12	144	5	1		27	111
13	40				7	33
14	41				9	32
15	2				2	
TOTAL	2,829	99	33	3	1,717	977

SOURCE: Bureau of Indian Affairs - Washington, D.C. - Personnel Division

Exhibit No. 8—Continued

Table 5

Grade Level Distribution of GS Employees By Race - Bureau of Indian
Affairs - New Mexico
1971

Grade Level	Total	Negro	Spanish Surnamed	Oriental	American Indian	Other
1	73				73	
2	34				34	
3	330		3		319	8
4	598	2	18		548	30
5	334	1	23		252	58
6	78		5		56	17
7	198		18		112	68
8	0					
9	586	45	43	3	131	364
10	9	2	1		2	4
11	262	10	22		58	172
12	201	2	13		29	157
13	94		2		9	83
14	47		1		7	39
15	10				3	7
TOTAL	2854	62	149	3	1633	1007

SOURCE: Bureau of Indian Affairs, Washington DC.- Personnel Division

Exhibit No. 8—Continued

Table 6

Wage Level Distribution of WB Employees By Race - Bureau of Indian Affairs - Arizona 1971

Wage Level	Total	Negro	Spanish Surnamed	Oriental	American Indian	Other
\$5,000	87				87	
\$5,000-4,499	1				1	
\$5,500-4,999	34				33	1
\$6,000-6,499	81				80	1
\$6,500-6,999	96				94-	2
\$7,000-7,999	109		1	1	104-	3
\$8,000-8,999	188	1	1		180	6
\$9,000-9,999	229	2	5		192	30
\$10,000-11,999	216	3	4		147	62
\$12,000-13,999	63	2	1		32	28
\$14,000-15,999	7				2	5
\$16,000-17,999	1					1
\$18,000-19,999						
Total	1112	8	12	1	952	139

SOURCE: Bureau of Indian Affairs: Washington DC.

Exhibit No. 8—Continued

Table 7

Wage Level Distribution of WB Employees By Race - Bureau of Indian
Affairs - New Mexico 1971

Wage Level	Total	Negro	Spanish Surnamed	Oriental	American Indian	Other
\$5,000	59				59	
\$5,000-4,499	3				2	1
\$5,500-4,999	43				42	1
\$6,000-6,499	90	1			89	
\$6,500-6,999	40				40	
\$7,000-7,999	99		3		94	2
\$8,000-8,999	117	1	3		108	5
\$9,000-9,999	170	2	8		127	33
\$10,000-11,999	42		1		32	9
\$12,000-13,999	28		3		12	13
\$14,000-15,999	6	1			2	3
\$16,000-17,999	0					
\$18,000-19,999	2				1	1
Total	699	5	18		608	68

SOURCE: Bureau of Indian Affairs: Washington DC

Exhibit No. 8—Continued

Table 8

Grade Level distribution of GS Employees Albuquerque
Area Office: As of June 1972

Grade	Total ¹	Indians			Non-Indians ²		
		Number	Male	Female	Number	Male	Female
1	39	39	11	28	0	-	-
2	18	18	6	12	0	-	-
3	98	94	38	66	4	-	4
4	127	116	48	68	11	2	9
5	128	105	43	62	23	6	17
6	14	11	8	3	3	1	2
7	75	43	32	11	32	16	16
8	0	0	-	-	0	--	---
9	174	55	27	28	119	57	62
10	4	2	2	-	2	1	1
11	110	24	20	4	86	73	13
12	80	15	14	1	65	60	5
13	29	1	1	-	28	26	2
14	24	3	3	-	21	20	1
15	1	0	-	-	1	1	-
16	-	0	-	-	-	--	-
TOTAL	931	536	253	283	395	263	132

SOURCE: Grade Level Distribution by Minority and Sex, Bureau of Indian Affairs, Albuquerque, New Mexico Area - As of 6/30/72

¹Includes total area office employment (both Indian and non-Indian).

²Non-Indian category includes Negro, Spanish-Surnamed, Oriental and White.

Exhibit No. 8—Continued

Table 9

Grade Level Distribution of GS Employees Navajo
Area Office: As of June 1972

Grade	Total ¹	Indians			Non-Indians ²		
		Number	Male	Female	Number	Male	Female
1	95	95	31	64	0	—	—
2	38	38	13	25	0	—	—
3	573	557	130	427	16	6	10
4	1091	999	240	759	92	23	69
5	301	205	91	114	96	43	53
6	95	77	37	40	18	8	10
7	166	77	48	29	89	38	51
8	0	0	—	—	0	—	—
9	1006	145	59	86	861	427	434
10	10	0	—	—	10	8	2
11	254	60	42	18	194	146	48
12	112	28	27	1	84	76	8
13	39	8	7	1	31	28	3
14	22	3	3	—	19	18	1
15	1	1	1	—	0	—	—
16	0	0	—	—	0	—	—
TOTAL	3796	2293	729	1564	1503	817	686

SOURCE: Grade Level Distribution by Minority and Sex, Bureau of Indian Affairs, Albuquerque, New Mexico Area - As of 6/30/72

¹Includes total area office employment (both Indian and non-Indian).

²Non-Indian category includes Negro, Spanish-Surnamed, Oriental and White.

Exhibit No. 8—Continued

Table 10

Grade Level distribution of GS Employees Phoenix
Area Office: As of June 1972

Grade	Total ¹	Number	Indians		Non-Indians ²		
			Male	Female	Number	Male	Female
1	45	45	20	25	—	—	—
2	7	7	6	1	—	—	—
3	90	82	30	52	8	—	8
4	183	155	51	104	28	10	18
5	198	140	73	67	58	17	41
6	18	15	10	5	3	—	3
7	72	46	37	9	26	13	13
8	7	5	4	1	2	1	1
9	279	59	42	17	220	101	119
10	8	1	1	—	7	7	—
11	144	34	25	9	110	95	15
12	109	14	12	2	95	86	9
13	26	4	4	—	22	22	—
14	31	8	8	—	23	23	—
15	2	2	2	—	—	—	—
16	—	—	—	—	—	—	—
TOTAL	1218	617	325	292	601	374	227

SOURCE: Grade Level Distribution by Minority and Sex, Bureau of Indian Affairs, Albuquerque, New Mexico Area - As of 6/30/72

¹ Includes total area office employment (both Indian and non-Indian).

² Non-Indian category includes Negro, Spanish-Surnamed, Oriental and White.

Table 11
 Wage Board Distribution of Indians and Non-Indians by Area Office: As of June
 1972

Wage Level	PHOENIX				NAVAJO				ALBUQUERQUE			
	INDIAN		NON-INDIAN		INDIAN		NON-INDIAN		INDIAN		NON-INDIAN	
	M	F	M	F	M	F	M	F	M	F	M	F
Up thru \$5,499	1	1	0	0	19	1	0	0	9	0	0	0
\$5,500 - \$6,999	21	31	1	0	269	101	2	2	29	14	0	0
\$7,000 - \$7,999	45	12	6	1	81	67	7	6	29	20	3	0
\$8,000 - \$8,999	59	7	9	0	193	18	16	0	17	4	3	1
\$9,000 - \$9,999	51	14	27	1	185	92	74	4	27	2	5	0
\$10,000-\$13,999	91	1	78	0	117	27	73	3	17	1	7	0
\$14,000- \$17,999	12	0	3	0	3	0	11	0	1	0	0	0
\$18,000- and over	4	0	1	0	4	0	1	0	0	0	0	0
Total Wage System	284	48	125	2	871	306	184	15	129	41	18	1

SOURCE: Grade level distribution by minority and sex-Bureau of Indian Affairs - Albuquerque, Phoenix and Navajo Areas 6/30/72

1 Non-Indian includes Negro, Spanish Surnamed, Oriental and White.
 M-Male
 F-Female

Exhibit No. 8—Continued

Table 12
Table 12

STATE AGENCIES	MEDIAN SALARY RANGE	MEDIAN EDUCATION LEVEL	AVERAGE MONTHLY SALARY	AVERAGE YRS. & Mths. IN AGENCY	AVERAGE A:1
COMMISSION ON AGING	40	3 YEARS OF COLLEGE	\$399	2 11 9	31
ALCOHOLIC BEVERAGE CONTROL	35	12TH GRADE	\$425	2 11 7	42
ALCOHOLISM COMMISSION	34	12TH GRADE	\$529	4 11 11	49
ARTS COMMISSION	32	3 YEARS OF COLLEGE	\$520	1 11 11	51
ATTORNEY GENERAL	47	4 YEARS OF COLLEGE	\$604	2 2 2	323
STATE AUDITOR	45	1 YEARS OF COLLEGE	\$541	1 1 2	37
AUTOMATED DATA PROCESSING	35	12TH GRADE	\$610	3 0 0	31
AVIATION BOARD	30	12TH GRADE	\$701	4 11 7	30
BANKING DEPARTMENT	40	2 YEARS OF COLLEGE	\$531	5 1 1	45
BARBER EXAMINERS BOARD	41	12TH GRADE	\$520	10 7 7	44
CARRIE TINGLEY HOSPITAL	20	12TH GRADE	\$410	5 0 0	43
CHILDREN & YOUTH	31	12TH GRADE	\$555	1 4 4	54
CIVIL DEFENSE	30	3 YEARS OF COLLEGE	\$509	5 4 4	47
CONSTRUCTION LICENSING BOARD	42	12TH GRADE	\$581	5 5 48	48
CORPORATION COMMISSION	32	12TH GRADE	\$617	5 11 8	41
DEPARTMENT OF CORRECTIONS	25	12TH GRADE	\$553	1 0 0	39
COSMETOLOGY BOARD	25	12TH GRADE	\$420	1 10 81	81
DEPARTMENT OF DEVELOPMENT	33	1 YEAR OF COLLEGE	\$540	8 2 8	84
DRUG CLEARING BOARD	38	12TH GRADE	\$518	8 2 2	82
DEPARTMENT OF EDUCATION	35	1 YEAR OF COLLEGE	\$572	2 11 59	59
BOARD OF EDUCATIONAL FINANCE	30	4 YEARS OF COLLEGE	\$534	4 2 56	56
EDUCATIONAL RETIREMENT BOARD	34	1 YEAR OF COLLEGE	\$548	4 1 33	33
EMPLOYMENT SECURITY COMMISSION	37	2 YEARS OF COLLEGE	\$518	5 0 0	40
STATE ENGINEER	33	3 YEARS OF COLLEGE	\$700	9 1 1	40
ENGINEER & LAND SURVEYORS	30	12TH GRADE	\$422	4 7 7	64
STATE FAIR	35	12TH GRADE	\$548	1 0 0	35
DEPT. OF FINANCE & ADMINISTRATION	30	12TH GRADE	\$509	3 4 4	40
FORESTRY DEPARTMENT	37	2 YEARS OF COLLEGE	\$524	4 0 0	37
GAME & FISH DEPARTMENT	30	1 YEAR OF COLLEGE	\$507	9 2 0	40
HEALTH & SOCIAL SERVICES	37	2 YEARS OF COLLEGE	\$515	5 2 40	40
HIGHWAY DEPARTMENT	33	12TH GRADE	\$531	7 2 40	40
DEPT. OF HOSPITALS & INSTITUTIONS	23	12TH GRADE	\$404	4 10 40	40
HUMAN RIGHTS COMMISSION	37	1 YEAR OF COLLEGE	\$722	1 1 32	32
INDIAN AFFAIRS COMMISSION	39	4 YEARS OF COLLEGE	\$595	1 0 0	40
INTER-TRIBAL CEREMONIAL ASSOC.	32	12TH GRADE	\$512	6 1 1	45
INVESTMENT COUNCIL	32	2 YEARS OF COLLEGE	\$572	6 2 0	37
LABOR & INDUSTRIAL COMMISSION	35	12TH GRADE	\$547	6 4 37	37
LAND OFFICE	34	12TH GRADE	\$535	6 5 43	43
LAW ENFORCEMENT ACADEMY	43	2 YEARS OF COLLEGE	\$760	0 10 47	47
STATE LIBRARY	30	1 YEAR OF COLLEGE	\$510	5 4 39	39
LICENSIED PETROLEUM GAS COMM.	35	12TH GRADE	\$543	11 2 51	51
LIVESTOCK BOARD	30	12TH GRADE	\$505	6 8 45	45
ENERGY PLANNING	44	3 YEARS OF COLLEGE	\$517	0 5 33	33
MEDICAL EXAMINERS BOARD	25	12TH GRADE	\$457	9 7 41	41
MINE INSPECTORS	48	12TH GRADE	\$770	7 4 48	48
MINER TRANSPORTATION	32	12TH GRADE	\$478	2 10 40	40
MINER VEHICLE	27	12TH GRADE	\$425	3 5 35	35
MINISTERS OF NEW MEXICO	37	1 YEAR OF COLLEGE	\$524	0 6 34	34
MUNICIPAL BOARD	27	12TH GRADE	\$520	1 0 53	53
NATURAL CONSERVATION COMMISSION	34	12TH GRADE	\$734	11 3 40	40
OFFICE OF TAX ADMINISTERING COMMISSION	31	1 YEAR OF COLLEGE	\$503	4 4 32	32
DR. LINCOLN COUNTY MEMORIAL	24	11TH GRADE	\$498	4 5 47	47
LAND & RECREATION COMMISSION	26	12TH GRADE	\$433	3 10 42	42
CHILD PERSONNEL BOARD	37	12TH GRADE	\$530	1 9 30	30
INDIANITY BOARD	45	12TH GRADE	\$678	4 5 45	45
INDIANING OFFICE	43	4 YEARS OF COLLEGE	\$704	1 4 35	35
INDUSTRY APPRAISAL	37	12TH GRADE	\$549	4 0 39	39
PUBLIC EMPLOYEES RETIREMENT	31	12TH GRADE	\$517	5 4 35	35
INDIAN SERVICE COMMISSION	49	12TH GRADE	\$1,075	4 7 52	52
INDIANING ADMINIT	31	12TH GRADE	\$534	1 6 45	45
INDIANING COMMISSION	30	12TH GRADE	\$543	6 10 54	54
INDIAN COMMUNICATIONS	42	12TH GRADE	\$726	2 0 37	37
INDIAN ESTATE COMMISSION	26	12TH GRADE	\$422	0 8 24	24
INDIAN RECORDS & ARCHIVES COMMISSION	30	12TH GRADE	\$525	3 4 35	35
INDIAN BEAL OF REVENUE	37	12TH GRADE	\$537	4 4 40	40
INDIAN SECRETARY OF STATE	25	1 YEAR OF COLLEGE	\$527	1 2 35	35
INDIAN SOIL & WATER CONSERVATION	30	12TH GRADE	\$585	3 4 26	26
INDIAN SOLICITUS PROPERTY	36	12TH GRADE	\$431	8 0 37	37
TAX APPEAL BOARD	-	12TH GRADE	\$570	1 1 47	47
INDIAN TRAFFIC SAFETY COMMISSION	37	12TH GRADE	\$753	2 10 41	41
INDIAN STATE TREASURER	32	12TH GRADE	\$673	8 4 45	45
INDIAN VETERANS SERVICE COMMISSION	35	12TH GRADE	\$545	7 10 44	44
INDIAN VETERANS APPROVAL COMMITTEE	40	4 YEARS OF COLLEGE	\$792	9 5 53	53
ALL AGENCIES:	33	12TH GRADE	\$540	5 7 59	59

SOURCE: Minority Groups in State Government: A report to the Governor by the New Mexico State Personnel Board (1972) Table 8 p.18

Exhibit No. 8—Continued

Table 13
Monthly Salaries of New Mexico State Employees By Ethnic Group
1971

Monthly Salary	All Groups	Anglo	Spanish Surnamed	American Indian	Negro	Other Or Unreported
Hourly Employees	3.1%	3.3%	2.6%	9.1%	11.5%	17.4%
Under \$400 Per Month	29.9	16.8	39.4	33.3	52.9	39.1
\$400-\$499 Per Month	19.6	14.8	23.1	26.3	11.5	13.0
\$500-\$599 Per Month	14.5	16.1	13.3	15.2	5.7	17.4
\$600-\$699 Per Month	13.2	17.8	10.1	6.6	12.6	4.3
\$700-\$799 Per Month	6.6	9.7	4.5	5.1	1.1	--
\$800-\$899 Per Month	3.6	5.4	2.3	2.0	2.3	
\$900-\$999 Per Month	4.0	6.5	2.2	1.0	2.3	4.3
Over \$999 Per Month	5.4	9.6	2.5	1.5	0	4.3
Total Percent	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

SOURCE: Minority Groups In State Government: A report to the Governor by the New Mexico State Personnel Board (1972) Table 5 p.10

Exhibit No. 8—Continued

Table 14

Percentage of Classified Employees, by Ethnic Group and Sex,
Above the Median Salary Range for their Agency—1971

STATE AGENCIES	ALL GROUPS	ANGLO	SPANISH	INDIAN	NEGRO	OTHER OR UNREPORTED	MALE	FEMALE
COMMISSION ON AGING	50.0%	40.0%	69.7%	-	-	-	100%	80.0%
ALCOHOLIC BEVERAGE CONTROL	37.8%	0%	40.0%	-	-	-	41.7%	23.0%
ALCOHOLISM COMMISSION	49.8%	84.0%	27.5%	-	0%	-	53.0%	13.0%
ARTS COMMISSION	80.0%	80.0%	-	-	-	-	-	80.0%
ATTORNEY GENERAL	47.4%	77.0%	22.2%	-	-	0%	88.7%	14.3%
STATE AUDITOR	44.0%	80.0%	35.0%	-	-	-	81.1%	0%
AUTOMATED DATA PROCESSING	80.0%	92.0%	39.2%	-	-	-	77.1%	17.2%
AVIATION BOARD	50.0%	-	80.0%	-	-	-	-	80.0%
BANKING DEPARTMENT	48.2%	78.0%	0%	-	-	-	85.7%	0%
BARBER EXAMINERS	0%	-	-	-	-	-	-	0%
CARRIE TINGLEY HOSPITAL	44.4%	83.0%	30.0%	-	-	-	39.0%	47.1%
CHILDREN & YOUTH	50.0%	100%	25.0%	-	-	-	89.7%	33.3%
CIVIL DEFENSE	33.3%	25.0%	80.0%	-	-	-	28.0%	80.0%
CONSTRUCTION LICENSING BOARDS	0%	4.0%	0%	-	-	-	8.1%	0%
CORPORATION COMMISSION	48.6%	07.8%	41.6%	-	-	-	72.0%	35.0%
DEPARTMENT OF CORRECTIONS	37.0%	43.4%	35.7%	25.0%	25.0%	-	42.4%	20.2%
COSMETOLOGY BOARD	80.0%	-	80.0%	-	-	-	-	80.0%
DEPARTMENT OF DEVELOPMENT	50.0%	00.7%	41.4%	-	-	-	53.0%	44.4%
DRY CLEANING BOARD	0%	0%	-	-	-	-	-	0%
DEPARTMENT OF EDUCATION	48.4%	81.8%	01.8%	50.0%	0%	-	70.6%	52.0%
BOARD OF EDUCATIONAL FINANCE	50.0%	100%	33.3%	-	-	-	-	50.0%
EDUCATIONAL RETIREMENT BOARD	48.1%	50.0%	44.4%	-	-	-	100%	30.0%
EMPLOYMENT SECURITY COMMISSION	49.8%	63.7%	43.1%	28.9%	20.0%	28.8%	63.0%	32.1%
STATE ENGINEER	42.0%	82.7%	16.0%	-	-	-	60.0%	3.0%
ENGINEER & LAND SURVEYORS	33.0%	0%	80.0%	-	-	-	-	33.3%
STATE FAIR	44.4%	78.0%	0%	-	0%	-	37.6%	100%
DEPT. OF FINANCE & ADMINISTRATION	43.8%	73.3%	30.0%	-	100%	-	43.0%	44.8%
FORESTRY DEPARTMENT	47.1%	83.8%	18.2%	-	-	-	48.0%	0%
GAME & FISH DEPARTMENT	47.1%	50.0%	21.0%	0%	-	0%	52.0%	21.0%
HEALTH & SOCIAL SERVICES	39.3%	85.0%	20.4%	8.4%	23.3%	0%	53.4%	30.7%
HIGHWAY DEPARTMENT	47.0%	82.4%	23.0%	22.3%	50.0%	-	47.1%	58.7%
DEPT. OF HOSPITALS & INSTITUTIONS	49.0%	88.2%	42.4%	87.1%	60.0%	0%	52.3%	48.9%
HUMAN RIGHTS COMMISSION	33.3%	0%	80.0%	-	-	-	80.0%	0%
INDIAN AFFAIRS COMMISSION	-	-	0%	-	-	-	-	-
INTER-TRIBAL CEREMONIAL ASSOC.	-	-	-	-	-	-	-	-
INVESTMENT COUNCIL	40.0%	100%	25.0%	-	-	-	100%	0%
LABOR & INDUSTRIAL COMMISSION	42.0%	100%	27.3%	-	-	-	71.4%	14.3%
LAND OFFICE	43.2%	88.4%	37.0%	-	0%	0%	-	-
LAW ENFORCEMENT ACADEMY	42.0%	33.3%	100%	-	-	-	60.0%	0%
STATE LIBRARY	42.3%	64.1%	23.1%	-	-	-	30.4%	47.0%
LIQUIDATED PETROLEUM GAS COMW.	20.8%	20.0%	80.0%	-	-	-	0%	80.7%
LIVESTOCK BOARD	31.8%	81.6%	30.0%	-	-	-	35.8%	0%
LIGHTPOWER PLANNING	68.7%	-	60.7%	-	-	-	100%	0%
METRIC EXAMINERS BOARD	50.0%	100%	0%	-	-	-	-	80.0%
MENTAL INSPECTORS	10.2%	14.3%	23.0%	-	-	-	23.0%	0%
RAILROAD TRANSPORTATION	37.0%	20.0%	33.0%	68.7%	-	-	41.4%	17.0%
RAILROAD VEHICLE DEPARTMENT	48.8%	40.1%	49.0%	68.7%	0%	0%	73.1%	76.9%
REVENUE OF NEW MEXICO	48.0%	53.0%	20.0%	80.0%	-	-	41.0%	39.1%
REVENUE BOARD	33.3%	80.0%	0%	-	-	-	-	33.3%
COL. PRESERVATION COMMISSION	48.8%	80.7%	20.7%	-	-	-	90.0%	4.0%
COL. STATE ACCOUNTING	47.4%	100%	37.5%	-	-	-	81.8%	10.7%
DR. LINCOLN COUNTY MEMORIAL	10.0%	33.3%	0%	-	-	-	0%	14.3%
ENVIRONMENTAL PROTECTION COMMISSION	48.8%	81.8%	40.0%	0%	0%	-	44.0%	78.0%
FLYING TERRAZZO BOARD	48.8%	80.4%	20.6%	80.0%	-	-	82.6%	22.0%
PHARMACY BOARD	33.3%	80.0%	0%	-	-	-	50.0%	0%
PLANNING OFFICE	43.1%	88.0%	29.0%	80.0%	-	-	86.7%	4.3%
PROPERTY APPRAISAL	42.0%	80.7%	33.3%	0%	-	-	58.3%	18.8%
PUBLIC EMPLOYEES RETIREMENT	80.0%	100%	47.8%	100%	-	-	87.1%	40.0%
PUBLIC SERVICE COMMISSION	80.0%	82.0%	0%	-	-	-	71.4%	0%
PURCHASING ADMIN.	80.0%	83.3%	16.7%	-	-	-	100%	40.0%
R. & B. COMMISSION	0%	0%	-	-	-	-	-	0%
RADIO COMMUNICATIONS	20.1%	27.0%	20.0%	-	-	-	31.0%	0%
REAL ESTATE COMMISSION	33.0%	-	33.0%	-	-	-	-	33.0%
RECORDS & ARCHIVES COMMISSION	47.4%	68.7%	30.0%	-	-	-	67.0%	42.8%
REGAL OF REVENUE	45.1%	68.1%	31.0%	0%	33.3%	0%	80.0%	15.4%
SECRETARY OF STATE	45.0%	33.3%	80.0%	-	-	-	80.0%	44.4%
SOIL & WATER CONSERVATION	50.0%	100%	0%	-	-	-	100%	0%
STANSLIS PROPERTY	48.4%	0%	80.0%	-	-	-	87.1%	80.0%
TAX APPEAL BOARD	-	-	-	-	-	-	-	-
TRAFFIC SAFETY COMMISSION	40.0%	66.7%	0%	-	-	-	100%	0%
STATE TREASURER	01.4%	80.0%	33.3%	-	-	0%	0%	44.4%
STEPHENS SERVICE COMMISSION	18.0%	0%	20.0%	-	-	-	7.7%	23.6%
VETERANS APPROVAL COMMITTEE	0%	0%	-	-	-	-	0%	-
ALL AGENCIES:	47.1%	64.5%	34.4%	22.0%	27.5%	20.6%	58.5%	35.3%

SOURCE: Minority Groups in State Government: A report to the Governor by the New Mexico State Personnel Board (1972) Table 9 p.19

Exhibit No. 8—Continued

Table 15

Education Level Of State Employees, By Ethnic Group: New Mexico.

Grade Completed	All ¹					
	Groups	Anglo	Spanish Surnamed	American Indian	Negro	Others Or Unreported
9th Grade	89.1%	94.8%	85.0%	81.3%	91.7%	88.3%
10th Grade	86.5	93.2	81.6	78.3	90.6	--
11th Grade	82.3	90.7	76.2	73.2	84.9	--
12th Grade	78.7	88.5	71.5	69.1	80.3	82.4
1st Year of College	37.2	56.1	23.3	23.4	38.9	41.2
2nd Year of College	29.7	48.3	16.1	16.3	25.3	23.6
3rd Year of College	23.9	40.8	11.6	10.7	21.7	--
4th Year of College	20.4	36.1	9.0	7.1	17.1	11.8
1 Year of Graduate Study	8.0	15.2	2.7	2.5	5.6	--
2 Years of Graduate Study	5.1	9.8	1.6	1.5	4.5	--
3 Years of Graduate study	2.6	4.9	0.9	1.0	3.4	5.9
4 Years or More	1.5	2.7	0.6	0.5	1.1	--

SOURCE: Minority Groups in State Government: A report to the Governor by the New Mexico State Personnel Board (1972), Table 6 p.13

¹ Percentage of each group having completed indicated level or higher.

Table 16
Minority Groups Report - New Mexico

NAME	MINORITY GROUPS REPORT		PART I		STATE TOTALS		ORIENTAL		UNSPECIFIED		TOTALS	
	MALE	FEM	MALE	FEM	MALE	FEM	MALE	FEM	MALE	FEM	MALE	FEM
WOMEN EMPLOYEES	77	60	157	69	63	132	12	6	18	6	10	28
1 YEAR COLLEGE	59	24	57	167	125	137	38	14	21	2	1	1
2 YEAR COLLEGE	25	24	57	32	25	57	14	2	10	1	1	1
3 YEAR COLLEGE	55	25	72	305	270	778	23	7	30	2	1	1
4 YEAR COLLEGE	107	304	735	653	143	568	6	4	13	6	11	1
5 YEAR COLLEGE	182	120	237	113	23	126	3	1	2	1	2	1
6 YEAR COLLEGE	243	45	228	121	6	137	1	1	2	1	2	1
7 YEAR COLLEGE	300	44	245	145	6	148	1	1	2	1	2	1
8 YEAR COLLEGE	45	41	226	687	200	587	31	0	37	5	2	7
9 YEAR COLLEGE	55	16	71	143	37	200	4	2	6	1	1	1
10 YEAR COLLEGE	77	35	112	225	92	217	10	1	11	1	1	1
11 YEAR COLLEGE	113	112	225	316	100	280	10	2	12	4	1	1
12 YEAR COLLEGE	201	142	343	281	100	421	6	14	1	10	11	1
13 YEAR COLLEGE	216	157	373	180	54	158	6	8	14	1	10	1
14 YEAR COLLEGE	303	211	514	316	50	368	6	3	9	4	6	1
15 YEAR COLLEGE	139	93	237	50	19	68	2	1	3	1	1	1
16 YEAR COLLEGE	146	99	245	16	5	19	1	1	2	1	1	1
17 YEAR COLLEGE	91	28	119	30	4	34	1	1	2	1	1	1
18 YEAR COLLEGE	42	30	82	101	38	78	28	14	40	6	26	32
19 YEAR COLLEGE	342	183	425	99	41	140	1	1	6	8	14	1
20 YEAR COLLEGE	84	44	128	110	36	144	1	1	1	3	4	1
21 YEAR COLLEGE	34	46	80	18	4	16	1	1	1	1	1	1
22 YEAR COLLEGE	99	42	142	87	42	129	1	1	2	5	7	1
23 YEAR COLLEGE	40	31	71	12	13	17	1	1	2	1	2	1
24 YEAR COLLEGE	11	7	18	45	13	30	1	1	2	1	2	1
25 YEAR COLLEGE	26	4	30	20	3	23	1	1	2	1	2	1
26 YEAR COLLEGE	61	41	102	89	33	118	1	1	1	1	2	1
27 YEAR COLLEGE	81	19	100	85	3	88	1	1	1	1	2	1
28 YEAR COLLEGE	28	11	39	37	7	44	1	1	2	2	2	1
29 YEAR COLLEGE	41	20	61	6	15	15	1	1	1	1	1	1
30 YEAR COLLEGE	17	6	23	82	17	10	1	1	1	1	1	1
31 YEAR COLLEGE	19	14	33	3	3	3	1	1	1	1	1	1
32 YEAR COLLEGE	4	9	13	19	2	21	1	1	1	1	1	1
33 YEAR COLLEGE	78	47	125	489	350	816	31	2	33	2	1	1
34 YEAR COLLEGE	554	412	1378	1310	927	2379	27	10	37	6	2	8
35 YEAR COLLEGE	33	62	95	38	34	69	1	1	1	1	1	1
36 YEAR COLLEGE	15	9	24	18	8	27	1	1	1	1	1	1
37 YEAR COLLEGE	24	3	27	123	4	127	1	1	1	1	1	1
38 YEAR COLLEGE	62	180	242	121	141	278	1	1	1	1	1	1

SOURCE: Minority Groups in State Government: A report to the Governor by the New Mexico State Personnel Board (1972)

Exhibit No. 8—Continued

Table 17

Ethnic Breakdown of Total Employees Employed By
Arizona State Agencies 1969-1971

Group	1969		1970		1971	
	Total	Percent	Total	Percent	Total	Percent
White	17,800	87.2	17,653	87.6	23,483	87.2
Black	719	3.5	733	3.6	909	3.4
Mexican American	1,401	6.9	1,308	6.5	1,943	7.2
American Indian	358	1.7	306	1.5	418	1.6
Oriental	142	.7	156	.8	165	.6
Total	20,420	100.0	20,156	100.0	26,918	100.0

SOURCE: Minority Group Employment in Arizona State Agencies, Arizona Civil Rights Commission, Phoenix, Arizona 1969, 1970 and 1971 editions.

Exhibit No. 8—Continued

Table 18

OCCUPATIONAL GROUP OF EMPLOYEES IN EACH STATE AGENCY (1971)

The employees in Occupational Group 1 and Occupational Group 2 for each state agency are listed below. If a single set of figures is found to the right of any given agency, it indicates that particular agency has employees only in OG-1. If two sets of figures are found to the right of the listed agency, the upper figure represents those employed in OG-1 and the lower figure represents those employed in OG-2.

For examples:

Corporation Commission	100	84	3	13	(OG-1 only)
Surplus Property Agency	5	5			(OG-1)
	6	4	1	1	(OG-2)

AGENCY

	<u>Total</u>	<u>White</u>	<u>Black</u>	<u>Mex. Amcr.</u>	<u>Indian</u>	<u>Oriental</u>
1. Accountancy Board	11	11	0	0	0	0
2. Aeronautics Department	17	17	0	0	0	0
3. Agriculture & Horticulture	176	169	1	4	1	1
4. Apprenticeship Council	16	16	0	0	0	0
5. Arizona State University	4,522 623	4,133 507	120 34	177 75	25- 4	67 3
6. Arts & Humanities Commission	16	16	0	0	0	0
7. Athletic Commission	4 7	2 0	1 2	1 5	0 0	0 0
8. Atomic Energy Commission	23	21	0	2	0	0
9. Attorney General	67	62	0	5	0	0
10. Auditor General						
11. Banking Department	21	21	0	0	0	0

DID NOT REPORT

Exhibit No. 8—Continued

<u>AGENCY</u>	<u>Total</u>	<u>White</u>	<u>Black</u>	<u>Mex. Amer.</u>	<u>American Indian</u>	<u>Oriental</u>
12. Barber Examiners Board	4	4	0	0	0	0
13. Office of State Chemist	8	8	0	0	0	0
	3	2	0	1	0	0
14. Chiropractic Examiners	3	3	0	0	0	0
15. Civil Air Patrol	2	2	0	0	0	0
16. Civil Rights Commission	16	5	5	4	2	0
17. Coliseum & Exposition	38	35	2	1	0	0
	23	13	5	5	0	0
18. Registrar of Contractors	27	27	0	0	0	0
	3	2	1	0	0	0
19. Corporation Commission	92	80	1	11	0	0
20. Department of Correction, Headquarters	81	74	2	4	0	0
(a) Alpine Conservation Center	19	19	0	0	0	0
(b) Arizona Girls School	26	24	0	1	1	0
	19	16	2	1	0	0
(c) Arizona Youth Center	53	46	3	4	0	0
	7	6	1	0	0	0
(d) Industrial School, Ft. Grant	73	68	1	4	0	0
	68	61	1	6	0	0
(e) Pardons & Paroles Board	5	4	0	1	0	0
(f) State Prison, Florence	88	73	0	14	1	0
	246	190	10	44	2	0
(g) Safford Conservation Center	17	16	0	1	0	0
21. Gemmetology Board	8	8	0	0	0	0
	3	2	1	0	0	0
22. Court of Appeals, Division 1	18	16	1	1	0	0
23. Court of Appeals, Division 2	12	11	0	1	0	0

Exhibit No. 8—Continued

<u>AGENCY</u>	<u>Total</u>	<u>White</u>	<u>Black</u>	<u>Amer.</u>	<u>Indi- an</u>	<u>Oriental</u>
24. Credit Union	18	14	1	3	0	0
25. Crippled Childrens Hospital	103	93	3	7	0	0
	48	22	11	12	3	0
25. Dairy Commission	4	4	0	0	0	0
27. Deaf & Blind School	23	23	0	0	0	0
	36	25	2	9	0	0
28. Dental Board	8	8	0	0	0	0
29. Economic Planning & Development	70	64	0	4	2	0
30. Education Department	354	235	25	51	39	4
	49	1	15	14	19	0
(a) Vocational Rehabilitation	172	161	3	6	1	1
31. Egg Inspection Board	10	10	0	0	0	0
32. Employment Security Commission:						
(a) Employment Service	598	381	63	106	44	4
(b) Unemployment Compensation	346	312	9	19	4	2
	12	11	8	3	0	0
33. State Tax Department	11	11	0	0	0	0
34. Finance Department	107	101	1	5	0	0
35. Fruit & Vegetable Standardization	20	20	0	0	0	0
36. General Directors & Embalmers	4	4	0	0	0	0
37. Game & Fish Department	219	213	2	3	1	0
	30	28	0	1	1	0

Exhibit No. 8—Continued

<u>AGENCY</u>	<u>Total</u>	<u>White</u>	<u>Black</u>	<u>Mex. Amer.</u>	<u>Indian</u>	<u>Oriente</u>
38. Governor's Office	23	16	1	1	2	0
(a) Civil Defense, Emergency Planning	14	14	0	0	0	0
(b) Four Corners Regional	DID NOT REPORT					
(c) Economic Opportunity Office	8	2	1	3	2	0
(d) Highway Safety Coordinator	8	8	0	0	0	0
(e) Manpower Planning	12	10	0	0	2	0
39. Health Department	258	240	3	10	3	2
(a) Air Pollution Advisory Council	27	26	1	0	0	0
40. Health Planning Department	21	21	0	0	0	0
41. Highway Department	2,837 1,440	2,474 1,175	40 25	292 182	18 56	13 2
42. State Hospital	630 224	582 158	27 43	20 21	1 2	0 0
43. Indian Affairs Commission	11	4	0	0	7	0
44. Industrial Commission	118	107	0	9	2	0
45. Industries for the Blind	11	10	0	1	0	0
46. Insurance Department	46	44	1	1	0	0
47. Junior Colleges Board of Directors	19	19	0	0	0	0
48. Justice Planning Agency	28	26	0	1	1	0

Exhibit No. 8—Continued

<u>AGENCY</u>	<u>Total</u>	<u>White</u>	<u>Black</u>	<u>Mer. Amer.</u>	<u>Indian</u>	<u>Oriental</u>
49. Land Department	56	51	0	5	0	0
50. Legislature:						
(a) House of Representatives	TOO BUSY TO REPORT					
(b) Legislative Council	21	19	0	1	1	0
(c) Senate	DID NOT REPORT					
51. Library & Archives & Extension Service	75 1	69 0	0 1	1 0	5 0	0 0
52. Liquor Department	15	15	0	0	0	0
53. Livestock Sanitary Board	34 130	31 116	0 0	1 8	1 6	1 0
5. Medical Examiners	10	10	0	0	0	0
55. Mental Retardation:						
(a) Central Office, Phoenix	17	17	0	0	0	0
(b) Childrens' Colony, Coolidge	186 432	174 288	6 77	5 59	1 7	0 1
(c) Training Program, Tucson	18	18	0	0	0	0
56. Mine Inspector	11	8	0	3	0	0
57. Mineral Resources-	14	14	0	0	0	0
58. National Guard	26 42	24 29	0 1	2 12	0 0	0 0
59. Naturopathic Board of Examiners	3	3	0	0	0	0

Exhibit No. 8—Continued

<u>AGENCY</u>	<u>Total</u>	<u>White</u>	<u>Black</u>	<u>Mex. Amer.</u>	<u>Indian</u>	<u>Oriental</u>
60. Northern Arizona University	786 146	745 41	4 18	17 61	15 26	5 3
61. Nursing Board	19	18	1	0	0	0
62. Oil & Gas Conservation Commission	13	13	0	0	0	0
63. Board of Dispensing Opticians	6	6	0	0	0	0
64. Optometry Board	3.5	3.5	0	0	0	0
65. Osteopathic Board	7	7	0	0	0	0
66. Outdoor Recreation Coordinating	7	6	0	1	0	0
67. State Parks	69	66	2	1	0	0
68. Personnel Commission	76	60	7	8	0	1
69. Pesticide Control Board	12	12	0	0	0	0
70. Pharmacy Board	13	13	0	0	0	0
71. Physical Therapy Examining Board				DID NOT REPORT		
72. Pioneer's Home, Prescott	20 69	19 54	0 0	1 15	0 0	0 0
73. Podiatry Examiners	3	3	0	0	0	0
74. Power Authority	10	10	0	0	0	0
75. Prescott Historical Society	24	24	0	0	0	0
76. Property Tax Appeals Board	5	5	0	0	0	0
77. Property Valuation	93	87	2	4	0	0

Exhibit No. 8—Continued

<u>AGENCY</u>	<u>Total</u>	<u>White</u>	<u>Black</u>	<u>Amer.</u>	<u>Indian</u>	<u>Oriental</u>
Psychology Board	5.5	5.5	0	0	0	0
79. Public Buildings Maintenance	26 83	23 45	1 22	2 16	0 0	0 0
80. Public Safety Department	351 512	333 474	1 8	17 25	0 5	0 0
81. Racing Commission	25	25	0	0	0	0
82. Real Estate Department	31	30	0	1	0	0
83. Regents Board of Budget Office.	19	19	0	0	0	0
84. Research Coordinating Unit		DID NOT REPORT				
85. Retirement Systems:						
(a) Public Safety Personnel	6	6	0	0	0	0
(b) State Employees & Teachers	50	50	0	0	0	0
86. Secretary of State	13	12	0	1	0	0
87. State Compensation Fund	474 10	432 8	7 1	31 1	4 0	0 0
88. Supreme Court	28	28	0	0	0	0
(a) Bar Association	22	22	0	0	0	0
89. Surplus Property Agency	11 3	11 1	0 0	0 2	0 0	0 0
90. Tax Commission	261	241	6	11	3	0
91. Technical Registration Board	12	12	0	0	0	0

Exhibit No. 8—Continued

<u>AGENCY</u>	<u>Total</u>	<u>White</u>	<u>Black</u>	<u>Mex. Amer.</u>	<u>Indian</u>	<u>Oriental</u>
92. Treasurer	11	9	1	1	0	0
93. Tuberculosis Sanitorium	75 67	69 43	1 15	4 6	1 3	0 0
94. University of Arizona	5,925 965	5,573 599	63 137	185 202	45 24	59 3
95. Veterans Service Commission	28	25	0	3	0	0
96. Water Commission	24	24	0	0	0	0
97. Weights and Measures	8	8	0	0	0	0
98. Welfare Department	904 54	788 38	18 5	69 9	29 2	0 0

Minority Group Employment in Arizona State
Agencies, Arizona Civil Rights Commission (1971)

A-Supervisory
E-All Other

Table 19
ETHNIC COMPOSITION OF CITY EMPLOYEES
PHOENIX, ARIZONA, AUG 1971

DEPARTMENT	TOTAL		ANGLO		NEGRO		MEXICAN		AMERICAN		ORIENTAL	
	A	B	A	B	A	B	A- AMERICIANS-B		A-INDIAN-B		A	B
AIRPORT	11	136	6	94	1	14	4	28	0	0	0	0
BUDGET AND RESEARCH	1	33	1	29	0	1	0	3	0	0	0	0
BUILDING AND HOUSING SAFETY	10	128	10	114	0	5	0	9	0	0	0	0
CITY COURT	3	59	3	52	0	4	0	3	0	0	0	0
CIVIL PLAZA	1	5	1	6	0	0	0	0	0	0	0	0
ENGINEERING	1	219	1	188	0	1	0	27	0	0	0	3
FINANCE	5	107	5	94	0	1	0	13	0	0	0	0
FIRE	131	473	118	418	1	7	12	18	0	0	0	0
HUMAN RELATIONS	0	6	0	2	0	1	0	3	0	0	0	0
LAW	2	40	2	32	0	0	0	8	0	0	0	0
LEAP	7	99	3	34	2	37	2	26	0	2	0	0
LIBRARY	3	161	2	131	0	9	1	20	0	1	0	0
MAINTENANCE SERVICE MANAGER	29	325	23	218	2	45	3	59	0	3	1	0
	2	27	2	22	0	3	0	2	0	0	0	0
MANAGEMENT INFORMATION	2	63	2	57	0	1	0	1	0	3	0	0
POLICE	132	1116	125	1031	1	21	6	62	0	1	0	1
PUBLIC HOUSING	4	57	1	13	1	16	2	28	0	0	0	0
REAL ESTATE	8	83	5	70	0	5	3	8	0	0	0	0
SANITATION	44	561	33	89	4	164	7	304	0	4	0	0
STREET MAINTENANCE	45	240	29	68	3	39	12	130	1	2	0	1
TRAFFIC ENGINEERING	13	53	4	32	0	1	9	20	0	0	0	0
WATER AND SEWERS	84	492	49	294	5	26	30	137	0	32	0	3
TOTAL	538	4482	425	3088	20	301	91	1009	1	48	1	8
		5020		3513		321		1100		49		9

TOTAL % ANGLO - 71.9

TOTAL % BLACK - 6.3

TOTAL % AMERICAN INDIAN--less than 1%

TOTAL % MEXICAN-AMERICANS 21.9

TOTAL % ORIENTAL--less than 1%

SOURCE: City of Phoenix, Employment Report 1970-1971. Prepared by Phoenix Human Relations Dept-Phoenix Ariz

A. Supervisor
R Non-supervisor

Exhibit No. 8-Continued

Table 20

City of Phoenix

Departmental Ethnic Breakdown By Job Classification
August 29, 1971

Prepared by:
Phoenix Human Relation Department, Phoenix, Arizona

Exhibit No. 8—Continued

Date: 8-29-71

DEPARTMENT							
AIRPORT	Total	Anglo	Negro	Mexican American	American Indian	Oriental	
Administrative	6	6					
Professional	6	6					
Technicians	6	6					
Office & Clerical	9	8		1			
Craftsmen-Skilled	18	14		4			
Operative Semi-Skilled	38	26	1	11			
Laborers-Unskilled	6	1		5			
Service Workers	47	27	13	7			
Supervisory	11	6	1	4			
TOTAL	147	100	15	32			

BUDGET and RESEARCH							
	Total	Anglo	Negro	Mexican American	American Indian	Oriental	
Administrative	2	2					
Professional	13	12		1			
Technicians	13	10	1	2			
Office & Clerical	5	5					
Craftsmen-Skilled							
Operative Semi-Skilled							
Laborers-Unskilled							
Service Workers							
Supervisory	1	1					
TOTAL	34	30	1	3			

BUILDING AND WORKING SAFETY							
	Total	Anglo	Negro	Mexican American	American Indian	Oriental	
Administrative	5	4	1				
Professional	10	8	1	1			
Technicians	1		1				
Office & Clerical	23	19	1	3			
Craftsmen-Skilled	64	60	1	3			
Operative Semi-Skilled	1			1			
Laborers-Unskilled							
Service Workers	24	23		1			
Supervisory	10	10					
TOTAL	120	124	5	6			

Exhibit No. 8—Continued

Date: 8-29-71

DEPARTMENT						
CITY COURT	Total	Anglo	Negro	Mexican American	American Indian	Oriental
Administrative	8	7	1			
Professional						
Technicians						
Office & Clerical	51	45	3	3		
Craftsmen-Skilled						
Operative Semi-Skilled						
Laborers-Unskilled						
Service Workers						
Supervisory	3	3				
TOTAL	62	55	4	3		

CIVIC PLAZA						
	Total	Anglo	Negro	Mexican American	American Indian	Oriental
Administrative	2	2				
Professional	2	2				
Technicians						
Office & Clerical	1	1				
Craftsmen-Skilled						
Operative Semi-Skilled						
Laborers-Unskilled						
Service Workers						
Supervisory	1	1				
TOTAL	6	6				

ENGINEERING						
	Total	Anglo	Negro	Mexican American	American Indian	Oriental
Administrative	15	14				1
Professional	23	21		1		1
Technicians	159	131	1	26		1
Office & Clerical	22	22				
Craftsmen-Skilled						
Operative Semi-Skilled						
Laborers-Unskilled						
Service Workers						
Supervisory	1	1				
TOTAL	220	189	1	27		3

Exhibit No. 3—Continued

Date: 8-25-71

DEPARTMENT						
FINANCE	Total	Anglo	Negro	Mexican American	American Indian	Oriental
Administrative	8	6		2		
Professional	33	34	1	1		
Technicians	1	1				
Office & Clerical	51	42		9		
Craftsmen-Skilled						
Operative Semi-Skilled	4	3		1		
Laborers-Unskilled						
Service Workers	8	8				
Supervisory	5	5				
TOTAL	113	89	1	13		

FIRE	Total	Anglo	Negro	Mexican American	American Indian	Oriental
Administrative	18	18				
Professional						
Technicians						
Office & Clerical	10	8	1	1		
Craftsmen-Skilled						
Operative Semi-Skilled						
Laborers-Unskilled						
Service Workers	415	382	6	17		
Supervisory	131	113	1	12		
TOTAL	574	538	8	30		

HUMAN RELATIONS	Total	Anglo	Negro	Mexican American	American Indian	Oriental
Administrative	1	2				
Professional	3	1	1	1		
Technicians						
Office & Clerical	2			2		
Craftsmen-Skilled						
Operative Semi-Skilled						
Laborers-Unskilled						
Service Workers						
Supervisory						
TOTAL	6	2	1	3		

Exhibit No. 8—Continued

Date: 8-29-71

DEPARTMENT						
LAW	Total	Anglo	Negro	Mexican American	American Indian	Oriental
Administrative	7	7				
Professional	18	16		2		
Technicians						
Office & Clerical	14	8		6		
Craftsmen-Skilled						
Operative Semi-Skilled						
Laborers-Unskilled						
Service Workers	1	1				
Supervisory	2	2				
TOTAL	42	34		8		

LEAP	Total	Anglo	Negro	Mexican American	American Indian	Oriental
Administrative	9	4	4	1		
Professional	22	13	4	5		
Technicians	2	1	1	1		
Office & Clerical	63	16	29	19	2	
Craftsmen-Skilled						
Operative Semi-Skilled						
Laborers-Unskilled						
Service Workers						
Supervisory	7	3	2	2		
TOTAL	106	37	39	28	2	

LIBRARY	Total	Anglo	Negro	Mexican American	American Indian	Oriental
Administrative	12	12				
Professional	34	34				
Technicians	20	20				
Office & Clerical	87	60	8	18	1	
Craftsmen-Skilled						
Operative Semi-Skilled	4	1	1	2		
Laborers-Unskilled						
Service Workers	4	4				
Supervisory	3	2		1		
TOTAL	164	133	9	21	1	

Exhibit No. 8—Continued

Date: 8-29-71

DEPARTMENT							
MAINTENANCE SERVICE	Total	Anglo	Negro	Mexican American	American Indian	Oriental	
Administrative	8	8					
Professional	1	1					
Technicians	8	6	1	1			
Office & Clerical	27	25	1	1			
Craftsmen-Skilled	124	100		14	2		
Operative Semi-Skilled	21	6	4	9			
Laborers-Unskilled	43	25	6	12			
Service Workers	63	37	33	22	1		
Supervisory	29	23	2	3		1	
TOTAL	354	241	47	62	3	1	

MANAGER	Total	Anglo	Negro	Mexican American	American Indian	Oriental	
Administrative	8	7	1				
Professional	8	8					
Technicians	2	1	1				
Office & Clerical	9	6	1	2			
Craftsmen-Skilled							
Operative Semi-Skilled							
Laborers-Unskilled							
Service Workers							
Supervisory	2	2					
TOTAL	29	24	3	2			

MANAGEMENT INFORMATION	Total	Anglo	Negro	Mexican American	American Indian	Oriental	
Administrative	1	1					
Professional	11	11					
Technicians	24	22			2		
Office & Clerical	28	23	1	1	1		
Craftsmen-Skilled							
Operative Semi-Skilled							
Laborers-Unskilled							
Service Workers							
Supervisory	2	2					
TOTAL	64	59	1	1	3		

Exhibit No. 8—Continued

Date: 6-29-71

DEPARTMENT							
POLICE	Total	Anglo	Negro	Mexican American	American Indian	Oriental	
Administrative	61	59	1	1			
Professional	20	17		3			
Technicians	4	4					
Office & Clerical	141	114	3	23		1	
Craftsman-Skilled							
Operative Semi-Skilled							
Laborers-Unskilled							
Service Workers	890	837	17	35	1		
Supervisory	132	125	1	6			
TOTAL	1243	1153	22	66	1	1	

PUBLIC HOUSING							
	Total	Anglo	Negro	Mexican American	American Indian	Oriental	
Administrative	1			1			
Professional	10	3	5	2			
Technicians							
Office & Clerical	11	8		3			
Craftsman-Skilled	15		5	10			
Operative Semi-Skilled	14	2	5	7			
Laborers-Unskilled	6		1	5			
Service Workers							
Supervisory	4	1	1	2			
TOTAL	61	14	17	30			

REAL ESTATE							
	Total	Anglo	Negro	Mexican American	American Indian	Oriental	
Administrative	4	3		1			
Professional	4	4					
Technicians	55	48	4	3			
Office & Clerical	19	15	1	3			
Craftsman-Skilled							
Operative Semi-Skilled	1			1			
Laborers-Unskilled							
Service Workers							
Supervisory	8	5		3			
TOTAL	91	75	5	11			

Exhibit No. 8—Continued

Date: 8-29-71

DEPARTMENT						
SANITATION	Total	Anglo	Negro	Mexican American	American Indian	Oriental
Administrative	4	4				
Professional	1	1				
Technicians	1	1				
Office & Clerical	3	1		2		
Craftsman-Skilled	29	19	2	8		
Operative Semi-Skilled	258	33	75	150		
Laborers-Unskilled	9		3	6		
Service Workers	255	30	64	130	4	
Supervisory	44	33	4	7		
TOTAL	605	122	188	311	4	

STREET MAINTENANCE						
	Total	Anglo	Negro	Mexican American	American Indian	Oriental
Administrative	2	2				
Professional	3	3				
Technicians	5	4				1
Office & Clerical	13	12		1		
Craftsman-Skilled	29	15	2	9		
Operative Semi-Skilled	169	23	29	110	2	
Laborers-Unskilled	22	4	8	10		
Service Workers						
Supervisory	45	29	3	12	1	
TOTAL	285	97	42	142	3	1

TRAFFIC SIGNS & SIGNALS						
	Total	Anglo	Negro	Mexican American	American Indian	Oriental
Administrative	3	3				
Professional	7	7				
Technicians	14	14				
Office & Clerical	5	5				
Craftsman-Skilled						
Operative Semi-Skilled	23	3		20		
Laborers-Unskilled	1		1			
Service Workers						
Supervisory	13	4		9		
TOTAL	66	36	1	29		

Exhibit No. 8—Continued

Date: 8-29-71

DEPARTMENT						
WATER AND SEWERS	Total	Anglo	Negro	Mexican American	American Indian	Oriental
Administrative	11	11				
Professional	16	14				2
Technicians	29	27	1	1		
Office & Clerical	60	60	1	5		
Craftsmen-Skilled	51	40	1	5	5	
Operative Semi-Skilled	161	83	7	60	25	1
Laborers-Unskilled	89	23	10	51	2	
Service Workers	49	23	6	15		
Supervisory	84	49	5	30		
TOTAL	576	343	31	167	32	3

	Total	Anglo	Negro	Mexican American	American Indian	Oriental
Administrative						
Professional						
Technicians						
Office & Clerical						
Craftsmen-Skilled						
Operative Semi-Skilled						
Laborers-Unskilled						
Service Workers						
Supervisory						
TOTAL						

	Total	Anglo	Negro	Mexican American	American Indian	Oriental
Administrative						
Professional						
Technicians						
Office & Clerical						
Craftsmen-Skilled						
Operative Semi-Skilled						
Laborers-Unskilled						
Service Workers						
Supervisory						
TOTAL						

Table-21
Ethnic Composition of City Employees
Tucson, Arizona, July 1971

TITLE	ANGLOS		MEXICAN AMERICANS		BLACKS		INDIANS & ORIENTALS		TOTAL
	SUPV	NON-SUPV	SUPV	NON-SUPV	SUPV	NON-SUPV	SUPV	NON-SUPV	
MAYOR'S OFFICE	1	4	0	0	0	0	0	0	5
POST AUDITOR	2	2	0	0	0	0	0	1	5
CITY MANAGER	2	5	0	2	0	0	0	0	9
PUBLIC INFO. OFFICER	0	1	0	0	0	0	0	0	1
ECONOMIC DEVELOPMENT	0	1	0	0	0	0	0	0	1
DOC'D ADMIN.	4	7	0	1	0	0	0	0	12
URBAN RENEWAL	5	6	0	1	1	2	0	0	15
PLANNING	4	22	1	2	0	0	1	0	30
INSPECTIONS	10	41	0	3	0	0	0	0	54
PUBLIC HOUSING	4	3	0	9	1	1	0	1	19
FINANCE DIRECTOR	1	2	1	0	0	0	0	0	4
BUDGET	2	2	0	1	0	0	0	0	5
ACCOUNTING	5	20	3	2	0	0	0	0	30
TREASURER	1	1	0	0	0	0	0	0	2
LICENSE-REVENUE	4	24	2	7	0	1	0	1	39
DATA PROCESSING	2	18	1	4	1	0	0	0	26
PURCHASING	5	18	1	4	0	0	0	0	28
CITY ATTORNEY	2	22	0	2	0	0	0	0	26
CITY COURTS	2	7	0	3	0	0	0	0	12
CITY CLERK	2	4	0	3	0	0	0	0	9
CITY ELECTIONS	1	0	1	0	0	0	0	0	2
PERSONNEL	4	11	0	2	0	1	0	0	18
COMMUNITY CENTER	4	0	0	1	0	0	0	0	5
POLICE ADMIN	8	7	0	0	0	1	0	0	16
FIELD SERVICES	38	226	3	22	0	4	0	1	294
DETECTIVE	13	45	6	7	0	0	0	0	65
POLICE RECORDS	8	40	0	10	1	0	0	0	59
CRIME LAB	1	2	0	0	0	0	0	0	3
POLICE TRAINING	3	9	0	1	0	0	0	0	13
POLICE TACTICAL SQUAD	3	15	0	2	0	0	0	0	12
POLICE INSP SERVICE	4	6	0	2	0	0	0	0	12
NARCO	10	5	0	3	0	0	0	0	18
POLICE-COMMUNITY REL	0	0	0	1	0	1	0	0	2
POLICE-UPGRADING	0	2	0	0	0	0	0	0	2
FIRE ADMIN	4	1	0	2	0	0	0	0	7
FIRE PREVENTION	3	9	0	0	0	0	0	0	12

Exhibit No. 8—Continued

Table 21 (continued)

TITLE	ANGLOS		MEXICAN AMERICANS		BLACKS		INDIANS & ORIENTALS		TOTAL
	SUPV	NON-SUPV	SUPV	NON-SUPV	SUPV	NON-SUPV	SUPV	NON-SUPV	
FIRE COMBAT	41	169	24	48	0	2	1	1	286
COMMUNICATIONS	6	14	0	1	0	0	0	0	21
TRAFFIC ADMIN.	1	4	0	1	0	0	0	0	6
PAINT SHOP	2	5	1	13	0	3	0	0	24
ELECTRIC SHOP	1	12	1	6	0	0	0	1	21
PARKING METERS	1	2	0	0	0	0	0	0	3
STREETS MAINTENANCE	2	12	9	76	0	7	0	3	109
STREET SWEEPERS	0	0	0	8	2	2	0	0	12
REFUSE-ADM & COLLECT	4	14	12	175	0	17	0	9	231
REFUSE DISPOSAL	0	0	1	8	0	0	0	0	9
BUILDING MAINTENANCE	2	9	1	8	0	0	0	0	20
AUTO SHOP	7	40	0	11	0	1	0	0	59
PUBLIC WORKS ADMIN	2	4	0	0	0	0	0	0	6
CUSTODIAN SERVICES	0	?	0	6	3	4	0	1	22
PUBLIC WORKS	8	57	0	9	0	0	0	0	74
LIBRARY	37	77	7	40	0	4	0	0	165
RECREATION	5	11	2	6	8	14	0	0	46
PARKS ADMIN	4	10	0	1	0	0	0	0	15
PARKS DIVISION	3	22	15	80	0	15	0	1	136
WATER & SEWERS	10	56	8	40	0	7	0	0	121
WATER & SEWERS ADMIN	3	2	0	0	0	0	0	0	5
WATER/SEWER ENGINEER'G	9	27	4	3	0	0	0	1	44
SEWER-MAINTENANCE	1	1	1	14	0	2	0	1	20
SEWAGE TREATMENT	6	18	0	2	0	3	0	0	29
WATER & SEWERS	5	14	11	43	0	1	0	0	74
MODEL CITIES	9	11	3	12	2	10	0	2	49
TOTALS	331	1187	113	708	19	100	2	24	2487
% OF TOTALS	13.31%	47.77%	4.54%	28.47%	.76%	4.02%	.08%	.97%	
TOTAL % ANGLO - 61.08			TOTAL % MEXICAN-AMERICAN 33.01						
TOTAL % BLACK - 4.78			TOTAL % ORIENTAL-INDIAN 1.05						
SOURCE: <u>Tucson Commission on Human Relations - Annual Report 1970-71 Tucson, Arizona p19-26</u>									

Exhibit No. 8—Continued

TABLE 22
STATE OF ARIZONA
DEPARTMENT OF EDUCATION
DIVISION OF EQUAL EDUCATIONAL OPPORTUNITIES

RACIAL AND ETHNIC STUDY OF ARIZONA PUBLIC SCHOOLS
SCHOOL EMPLOYEES, SPRING, 1972

SUMMARY FOR STATE OF ARIZONA

		SPANISH SURNAME	OTHER WHITE	NEGRO	ORIENTAL	AMERICAN INDIAN	OTHER NONWHITE	TOTAL
BUSINESS MANAGERS	EMPLOYEES	14	140	3	0	0	0	157
FINANCE OFFICERS	PERCENT	8.92	89.17	1.91	0.0	0.0	0.0	
SECRETARIES	EMPLOYEES	226	2206	23	2	42	2	2501
CLERK-STENOS. CLERKS	PERCENT	9.04	88.20	0.92	0.08	1.68	0.08	
DOCTORS	EMPLOYEES	17	496	9	1	3	1	527
NURSES	PERCENT	3.23	96.12	1.71	0.19	0.57	0.19	
PSYCHOLOGIST, COMMUNITY OR SOCIAL WORKER	EMPLOYEES	35	163	16	1	9	0	224
	PERCENT	18.63	72.77	7.14	0.48	4.02	0.0	
SUPERVISOR-TRANSPORT CAFETERIA, CUSTODIAL	EMPLOYEES	176	1032	18	1	19	0	1246
	PERCENT	16.13	82.63	1.44	0.08	1.52	0.0	
EMPLOYEE-TRANSPORT, CAFETERIA, CUSTODIAL	EMPLOYEES	1598	5544	223	3	329	11	7708
	PERCENT	20.73	71.93	2.89	0.04	4.27	0.14	
ASSISTANTS (PAID)- OFFICE, LIBRARY, LAB	EMPLOYEES	34	189	2	0	28	0	253
	PERCENT	13.44	74.70	0.79	0.0	11.07	0.0	
AIDES (PAID)-TEACHER LIBRARY, ETC.	EMPLOYEES	1283	2850	235	12	204	12	4596
	PERCENT	27.92	62.01	5.11	0.26	4.44	0.26	
NON-CERTIFIED TOTAL EMPLOYEES	EMPLOYEES	3383	12621	829	20	634	26	17212
	PERCENT	19.68	73.33	3.07	0.12	3.68	0.15	
SUPERINTENDENTS	EMPLOYEES	4	166	1	0	2	0	173
ASST. Supts.	PERCENT	2.31	98.98	0.58	0.0	1.16	0.0	
MUNICIPAL EDUC. ASSOC. VICE	EMPLOYEES	49	836	25	3	5	1	919
	PERCENT	8.33	90.97	2.72	0.33	0.84	0.11	
TEACHERS-CHAIRPERS SUPERVISORS	EMPLOYEES	39	767	17	1	3	4	846
	PERCENT	4.02	93.03	2.01	0.12	0.35	0.47	
CONSULTANTS COORDINATORS	EMPLOYEES	5	101	3	0	2	1	112
	PERCENT	4.46	90.18	2.68	0.0	1.79	0.89	
GUIDANCE COUNSELORS	EMPLOYEES	4	251	9	1	4	2	273
	PERCENT	2.20	91.94	3.30	0.37	1.47	0.73	
TEACHERS-LIBRARIANS HEALTH AID	EMPLOYEES	697	16759	393	53	141	114	18117
	PERCENT	3.83	92.15	2.16	0.46	0.78	0.63	
CERTIFIED TOTAL EMPLOYEES	EMPLOYEES	795	18900	448	89	157	122	20610
	PERCENT	3.88	92.15	2.18	0.43	0.77	0.59	
TOTAL EMPLOYEES	EMPLOYEES	4178	31521	977	108	791	148	37722
	PERCENT	11.08	83.56	2.59	0.29	2.10	0.39	

SOURCE: RACIAL-ETHNIC Survey: Pupils and Employees - Arizona Department of Education Division of Equal Educational Opportunities - Spring 1972 p.34.

Exhibit No. 8—Continued

Table 23
 Racial and Ethnic Breakdown of School Employees¹
 By County - Spring 1971: Arizona

County	Spanish Surname	Other White	Negro	Oriental	American Indian	Other Non-White	Total
<u>Apache</u>							
Employees	29	371	10	0	158	0	568
Percent	5.1	65.3	1.8	0.0	27.8	0.0	
<u>Cochise</u>							
Employees	172	1068	13	4	3	1	1261
Percent	13.6	84.7	1.0	0.3	0.2	0.1	
<u>Cocconino</u>							
Employees	47	500	7	1	90	0	645
Percent	7.3	77.5	1.1	0.2	14.0	0.0	
<u>Gila</u>							
Employees	67	448	2	0	47	1	565
Percent	11.9	79.3	0.4	0.0	8.3	0.2	
<u>Graham</u>							
Employees	30	292	0	1	10	1	334
Percent	9.0	87.4	0.0	0.3	3.0	0.3	
<u>Greenlee</u>							
Employees	35	207	0	0	0	0	242
Percent	14.5	85.5	0.0	0.0	0.0	0.0	
<u>Maricopa</u>							
Employees	1112	15815	461	55	51	12	17506
Percent	6.4	90.3	2.6	0.3	0.3	0.1	
<u>Mohave</u>							
Employees	11	558	0	0	9	1	579
Percent	1.9	96.4	0.0	0.0	1.6	0.2	
<u>Navajo</u>							
Employees	27	603	11	0	110	0	751
Percent	3.6	80.3	1.5	0.0	14.6	0.0	
<u>Pima</u>							
Employees	942	5996	163	27	62	2	7192
Percent	13.1	83.4	2.3	0.4	0.9	0.0	

TABLE CONTINUED

Exhibit No. 8—Continued

Table 23 (continued)

County	Spanish Surname	Other White	Negro	Oriental	American Indian	Other Non-White	Total
<u>Pinal</u>							
Employees	158	1163	38	1	41	1	1402
Percent	11.3	83.0	2.7	0.1	2.9	0.1	
<u>Santa Cruz</u>							
Employees	73	196	0	0	0	0	269
Percent	27.1	72.9	0.0	0.0	0.0	0.0	
<u>Yavapai</u>							
Employees	32	590	0	0	3	1	626
Percent	5.1	94.2	0.0	0.0	0.5	0.2	
<u>Yuma</u>							
Employees	140	1067	28	2	20	4	1261
Percent.	11.1	84.6	2.2	0.2	1.6	0.3	

SOURCE: Racial Ethnic Survey: Arizona Department of Education
Division of Equal Educational Opportunities

1

Includes: Superintendents, Assistant Superintendents; principals, assistant, associated, vice....directors; chairmen and supervisors, consultants, coordinators; guidance counselors; teachers-librarians; certificated; teachers aides; other classified.

Exhibit No. 8—Continued

Table 24
 Racial and Ethnic Breakdown of Teachers-Librarians
 Certificated by County-Spring 1971:
 Arizona

County	Spanish Surname	Other White	Negro	Oriental	American Indian	Other Nonwhite	Total
<u>Apache</u>							
Teachers	10	280	8	0	15	0	313
Percent	3.2	89.5	2.6	0.0	4.8	0.0	
Students	510	1677	109	3	4705	4	7008
Percent	7.3	23.9	1.6	.04	67.1	.06	
<u>Cochise</u>							
Teachers	75	741	6	0	2	0	824
Percent	9.1	89.9	0.7	0.0	0.2	0.0	
Students	6147	11322	450	155	55	8	18137
Percent	33.9	62.4	2.5	.85	.30	.04	
<u>Coconino</u>							
Teachers	23	350	3	1	9	0	386
Percent	6.0	90.7	0.8	0.3	2.3	0.0	
Students	2138	8407	576	70	3391	5	14587
Percent	14.7	57.6	4.0	.48	23.3	.03	
<u>Gila</u>							
Teachers	23	305	2	0	3	1	334
Percent	6.9	91.3	0.6	0.0	0.9	0.3	
Students	2157	4323	24	6	1137	1	7648
Percent	28.2	56.6	.31	.08	14.9	.01	
<u>Graham</u>							
Teachers	3	193	0	1	0	1	198
Percent	1.5	97.5	0.0	0.5	0.0	0.5	
Students	1207	2793	67	10	472	4	4553
Percent	26.5	61.3	1.5	.22	10.4	.09	
<u>Greenlee</u>							
Teachers	6	146	0	0	0	0	152
Percent	3.9	96.1	0.0	0.0	0.0	0.0	
Students	1648	1555	7	3	69	3	3285
Percent	50.1	47.3	.21	.09	2.1	.09	

TABLE CONTINUED

Exhibit No. 8—Continued

Table 24 (continued)

County	Spanish Surname	Other White	Neuro	Oriental	American Indian	Other NonWhite	Total
<u>Mari Copala</u>	388	9774	249	52	14	8	10485
Teachers	3.7	93.2	2.4	0.5	0.1	0.1	
Students	36657	194117	10892	1101	3344	397	246508
Percent	14.9	78.8	4.4	.45	1.4	.16	
<u>Mohave</u>							
Teachers	4	319	0	0	3	0	326
Percent	1.2	97.9	0.0	0.0	0.9	0.0	
Students	281	6014	1	9	240	3	5648
Percent	4.3	91.8	.02	.14	3.7	.05	
<u>Navajo</u>							
Teachers	12	402	1	0	7	0	422
Percent	2.8	95.3	0.2	0.0	1.7	0.0	
Students	677	3829	168	30	2798	1	7503
Percent	9.0	51.0	2.2	.40	37.3	.01	
<u>Pima</u>							
Teachers	166	3233	67	22	9	0	3497
Percent	4.7	92.5	1.9	0.6	0.3	0.0	
Students	21015	56880	3402	497	2080	17	83,891
Percent	25.1	67.8	4.1	.59	2.5	.02	
<u>Pinal</u>							
teachers	36	753	9	1	3	1	803
Percent	4.5	93.8	1.1	0.1	0.4	0.1	
Students	6367	8900	1012	69	1905	7	18260
Percent	34.9	48.7	5.5	.38	10.4	.04	
<u>Santa Cruz</u>							
Teachers	27	160	0	0	0	0	187
Percent	14.4	85.6	0.0	0.0	0.0	0.0	
Students	3455	910	29	14	1	0	4409
Percent	78.4	20.6	.66	.32	.02	0.0	
<u>Yavapai</u>							
Teachers	15	392	0	0	2	0	409
Percent	3.7	95.8	0.0	0.0	0.5	0.0	
Students	906	7611	35	9	257	0	8818
Percent	10.3	86.3	.40	.10	2.9	0.0	
<u>Yuma</u>							
Teachers	34	649	10	1	4	3	701
Percent	4.9	92.6	1.4	0.1	0.6	0.4	
Students	5129	9631	575	92	651	52	16130
Percent	31.8	59.7	3.6	.57	4.0	0.32	

SOURCE: Racial - Ethnic Survey - Arizona

Table 25
 Number of Full-Time Indian Teachers Employed by Selected School Districts in New Mexico: 1969-69 School Year¹

District and Location		Number of Indian Students		Number of Indian Teachers	
		Enrolled in the District 1968-69	% of the Total Enroll.	Employed in The District	% of the Total
Albuquerque	Bernalillo County	1704	2.1%	16	0.6%
Aztec	San Juan County	176	9.3	0	0.0
Belen	Valencia County	3	0.1	0	0
Bernalillo	Sandoval County	1287	47.5	3	2.6
Bloomfield	San Juan County	419	24.8	0	0.0
Central Consol	San Juan County	2878	76.9	15	9.6
Dulce	Rio Arriba County	578	76.1	0	0.0
Espanola	Rio Arriba County	317	5.3	2	0.9
Farmington	San Juan County	372	5.4	3	1.1
Gallup	McKinley County	6547	38.2	24	5.1
Grants	Valencia County	975	18.4	1	0.5
Jemez Mountain		66	10.1	0	0.0
Jemez Springs		319	50.3	1	3.3
Los Lunas	Valencia County	324	10.7	0	0.0
TOTAL		16965	28.3%	65	1.6%

¹ SOURCE: 1968 Elementary and Secondary Public School Survey. The Department of Health, Education and Welfare (Fall 1968).

Exhibit No. 8—Continued

Table 26
 Employment Participation Rates for American Indians In
 Private Industry - New Mexico
 1970

Category	¹ Total Employment	American			² Overall Participation
		Indian	Male	Female	Rate %
White Collar	40,973	515	285	230	1.3
Officials & Managers	6,768	90	84	6	1.3
Professional	10,394	72	29	43	.7
Technicians	6,541	133	96	37	2.0
Sales Workers	5,405	41	30	11	.8
Office & Clerical	11,865	179	46	133	1.5
Blue Collar	29,950	2,231	1,153	1,078	7.4
Craftsman	11,102	462	365	97	4.2
Operatives	12,819	1,523	583	940	11.9
Laborers	6,029	246	205	41	4.1
Service Workers	6,412	222	98	124	3.5
Total	77,335	2,968	1,536	1,432	3.8

SOURCE: 1970 EEO-1 Report Summary By State 466 Units State - New Mexico

¹Includes all ethnic and racial groups.

²Participation rate composite for male and female.

Exhibit No. 8—Continued

Table 27
Employment Participation Rates for American Indians In Private
Industry-Arizona 1970

Occupational Category	1			2	
	Total Employment	American Indian	Male	Female	Overall Participation Rate %
White Collar	99,004	542	280	262	.5
Officials & Managers	17,129	59	57	2	.3
Professional	21,787	84	37	47	.4
Technicians	11,083	110	75	35	1.0
Sales Workers	17,959	109	74	35	.6
Office & Clerical	31,051	180	37	143	.6
Blue Collar	81,450	2,142	1,671	471	2.6
Craftsman	24,922	348	319	29	1.4
Operatives	43,322	1,005	598	407	2.3
Laborers	13,206	789	754	35	6.0
Service Workers	16,445	468	173	295	2.8
Total	196,899	3,152	2,124	1,028	1.6

SOURCE: 1970 EEO-1 Report Summary By State 982 - Units State: Arizona

1 Includes all ethnic and racial groups.

2 Participation rate composite for male and female.

Table 28

N-Negro AI-American Indian
O-Oriental SS-Spanish Surname

Indian Employment In Private Industry by Job Categories - Phoenix Metropolitan Area - 1971¹

JOB CATEGORIES	TOTAL ²	TOTAL	TOTAL	MALE				FEMALE				TOTAL
	EMPLOYEES INCLUDING MINORITIES	MALE INCLUDING MINORITIES	FEMALE INCLUDING MINORITIES	MINORITIES				MINORITIES				
				N	O	AI	SS	N	O	AI	SS	
OFFICIALS AND MANAGERS	4204	3831	373	21	10	15	103	4	0	5	9	167
PROFESSIONALS	2130	1965	165	9	13	5	27	1	1	0	15	71
TECHNICIANS	1854	1681	173	16	3	8	72	2	3	0	4	108
SALES WORKERS	3487	2605	882	30	6	5	231	17	5	6	63	363
OFFICE & CLERICAL	6128	1104	5024	32	6	11	74	69	14	43	162	411
CRAFTSMAN (SKILLED)	5670	5346	324	136	22	32	459	3	0	1	13	666
OPERATIVES (SEMI-SKILLED)	6820	5392	1428	477	8	7	853	75	7	11	157	1659
LABORERS (UNSKILLED)	2215	2009	206	239	4	58	323	21	0	2	24	671
SERVICE WORKERS	4068	2304	1764	335	49	39	958	325	36	12	187	1941
TOTAL	36576	26237	10339	1295	121	244	3100	517	66	80	634	6057
				4760				1397				

¹SOURCE: EEO-1 Forms: Equal Employment Opportunity Commission

²Sample consists of 47 companies located in the Phoenix SMSA Including Phoenix, Mesa, Tempe and Scottsdale

Exhibit No. 8—Continued

N-Negro AI-American Indian
 O-Oriental SS-Spanish Surname

Table 29

Indian Employment In Private Industry By Job Categories - Albuquerque, Metropolitan Area 1971¹

JOB CATEGORIES	TOTAL ² EMPLOYEES INCLUDING MINORITIES	TOTAL MALE INCLUDING MINORITIES	TOTAL FEMALE INCLUDING MINORITIES	MALE MINORITIES				FEMALE MINORITIES				TOTAL MINOR.
				N	O	AI	SS	N	O	AI	SS	
OFFICIALS AND MANAGERS	1517	1371	146	3	-	5	79	2	-	-	22	111
PROFESSIONALS	2638	2535	103	13	10	4	80	1	-	-	6	114
TECHNICIANS	1570	1506	64	10	2	8	151	1	-	-	6	178*
SALES WORKERS	668	507	161	2	-	4	140	-	-	5	-33	184*
OFFICE & CLERICAL	3001	832	2169	15	-	13	296	30	6	22	488	870*
CRAFTSMAN (SKILLED)	2050	2007	43	14	-	55	592	-	-	3	9	673*
OPERATIVES (SEMI-SKILLED)	1569	1372	197	43	-	76	733	-	4	100	67	1023*
LABORERS (UNSKILLED)	1150	926	224	40	3	80	585	1	3	89	104	905*
SERVICE WORKERS	377	323	54	17	-	7	158	4	-	-	28	214*
TOTAL	14540	11379	3161	157	15	252	2814	39	13	219	763	4272
				3238				1034				

¹ Source: EEO-1 Equal Employment Opportunity Commission

² Sample consists of 27 companies located in the Albuquerque Metropolitan Area-

Exhibit No. 8—Continued

FOOTNOTES

Exhibit No. 8—Continued

FOOTNOTES

1/ See U.S. Commission on Civil Rights Staff Report, "Socio-Economic Profile of American Indians, November, 1972.

2/ Employment Security Commission of Arizona, Navajo Manpower Survey, Arizona State Employment Service (1969) p.6.

3/ See "Socio-Economic Profile". op. cit.

4/ Estimates of Resident Indian Population and Labor Force Status; By State and Reservation: March 1972, Bureau of Indian Affairs, September 1972. The labor force reported here includes all persons 16 years and older except those who cannot work because they are attending school, caring for children, or are unable to work by reason of disability, retirement, or age. Unlike national statistics, the BIA includes persons not seeking work, because of the difficulty in estimating this group without expensive surveys. Consequently, by including persons not wanting or seeking work in the labor force, the unemployment rate would be higher than it would be if a standard household survey were undertaken.

5/ Ibid.

6/ Ibid.

7/ See "Socio-Economic Profile". op. cit.

8/ No accurate data exists which would indicate the overall occupation breakdown of Indians living on reservations. Data for specific reservations, however, are available and where pertinent are used in this report. It should be emphasized that the occupational breakdown is valid only for the reservation in question.

9/ Benjamin J. Taylor, Dennis J. O'Connor, et al., Indian Manpower Resources in the Southwest: A Pilot Study, Bureau of Business and Economic Research, Arizona State University, Tempe, Arizona, 1969.

10/ Navajo Manpower Survey, p.26.

11/ Ibid.

12/ Benjamin J. Taylor, et al., op. cit.

Exhibit No. 8—Continued

13/ Minority Group Employment in the Federal Government: Nov. 30, 1971. Prepared by the U.S. Civil Service Commission, SM 70-71B. Table 3-32a, p.428-9 and Table 3-4a, p.372-3.

14/ Ibid.

15/ Ibid.

16/ F. Browning Pipestem, Indian Preference: A Preference to Conduct Self-Government, p.8. (Not dated)

17/ Ibid.

18/ The Indian Health Service is a component of the U.S. Public Health Service, a division of the U.S. Department of Health, Education, and Welfare. The IHS is not an integral part of the BIA. Essentially, the IHS has the responsibility for providing comprehensive health service to American Indians and Alaska Natives.

19/ F. Browning Pipestem, p.11.

20/ As cited in 116 Congressional Record 10371 - Section 14, December 14, 1970.

21/ Ibid.

22/ Minority Group Employment in the Federal Government: Nov. 30, 1971.

23/ A Report to the Governor by the New Mexico State Personnel Board, Table 7, p.17.

24/ See "Socio-Economic Profile". *op.cit.*

25/ Racial-Ethnic Survey: Pupils and Employees, Arizona Department of Education, Division of Equal Education Opportunities, Spring, 1972. p.v.

26/ Elementary and Secondary Public School Survey, Department of Health, Education and Welfare, (Fall, 1968).

27/ According to the 1970 Census, Indians constituted 1.6 percent of the population in Bernalillo County, 53.9 percent of the population in McKinley County, 10.3 percent of the total population in Rio Arriba County, 34.2 percent of the population in Sandoval County, 30.9 percent of the population in San Juan County, and 13.2 percent of the population in Valencia County.

Exhibit No. 8—Continued

28/ 1970 Equal Employment Opportunity - 1 Report Summary By State - 466 Units - New Mexico, Equal Employment Opportunity Commission, Wash. D.C., 1970. (mimeo)

29/ 1970, EEO - 1 Report Summary By State - 982 Units - Arizona, EEOC, Wash. D.C., 1970. (mimeo)

30/ This survey involved the aggregation of employment data from 47 major companies located in the Phoenix metropolitan area. The primary source of this data were EEO-1 Reports provided by the Equal Employment Opportunity Commission.

31/ This survey involved the aggregation of data from 27 separate companies located in Albuquerque, New Mexico. The primary source of data were EEO-1 Reports.

*This staff paper was prepared by Ernest Gerlach, Research Analyst, Southwestern Regional Office, U.S. Commission on Civil Rights, San Antonio, Texas.

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS



CERTIFICATE
SUPERIOR PERFORMANCE

granted to

RUTH B. MAISANO

in recognition of service performed in a manner
exceeding the requirements of her position.

Granted this 28th day of August, 1962

A R E A D I R E C T O R

Exhibit No. 9

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Exhibit No. 9—Continued

Branch of Personnel, Albuquerque Area Office
Through: Assistant Area Director (Administration)

Albuquerque Area Office
August 14, 1969

Area Safety Officer

Nomination for the 1969 Public Service Award Competition - Ruth B. Paisano

Attached is information concerning Mrs. Ruth B. Paisano, a nominee
for the 1969 Public Service Award.

Area Safety Officer

Attachment

Exhibit No. 9—Continued

NOMINEE FOR 1969 PUBLIC SERVICE AWARD

NOMINEE Ruth B. Paisano EMPLOYED BY Bureau of Indian Affairs
 AGE 40 LENGTH OF SERVICE 19 CATEGORY OF AWARD _____
 (Federal, State, County, City,
 SALARY CATEGORY _____ Private Citizen)
 Under \$5,000 \$5,000-\$10,000 X Over \$10,000 _____

is hereby nominated for Public Service Award sponsored by the New Mexico Distinguished Public Service Awards Council in cooperation with the National Civil Service League.

NOMINATION—Describe the ways in which the nominee has made significant contribution to the Public Service; promoted public appreciation of quality in government; encouraged government employees to pursue excellence; or stimulated able young people to choose government careers. (Description should be brief, clear and concise— see criteria for selection on reverse side.)

Mrs. Ruth Paisano has been prominent in tribal affairs since 1955, working for better understanding by both Indian and non-Indian, of Indian needs and problems. Using her extensive knowledge of government and Bureau of Indian Affairs policies and regulations gained through her employment as a Secretary in the Bureau of Indian Affairs, Mrs. Paisano advises Indians, both young and old, who travel 70 miles or more for assistance on matters such as Social Security benefits, Income Tax problems, land disputes, legal problems, employment and training opportunities, selective service, welfare, etc. Mrs. Paisano is a strong advocate of better and higher education for Indian children and has assisted many and urged many to continue their education. Mrs. Paisano acts as an interpreter and secretary for the Acoma Pueblo Tribal Council. She interprets and advises the council on complex problems arising from legislation affecting Indian people and from new programs introduced by the Bureau of Indian Affairs and other agencies of the government. Mrs. Paisano is often a delegate, representing the Acoma Pueblo, at inter-tribal conferences. She was instrumental in setting up several community action programs at the Acoma Pueblo under the auspices of the Office of Economic Opportunity.

Mrs. Paisano is and has been a member of the following organizations:

Chairwoman, Acoma Community Action Administering Board
 Chairwoman, Acoma Community Action Program Committee
 Vice-Chairwoman, Community Action Administrative Board (1965-1966)
 Chairwoman, Policy-Making Committee (Acoma Pueblo CAA)
 Vice-Chairwoman, Education Committee (Acoma Pueblo)
 Secretary, Steering Committee for National Congress of American Indians (Albuquerque Area).

Please include all pertinent information that will assist the selection panel in evaluating the nomination. Attach additional sheets or exhibits if necessary.

Signature of person making nomination _____ Bureau of Indian Affairs, Albuquerque Area 0
 _____ Organization or governmental unit

August 14, 1959
Date

843-3140
Phone

P. O. Box 827, Albuquerque, N.M.
Address

June 7, 1972

NYIC Files Bias Complaint On Behalf of BIA Employee

By CHUCK ANTHONY

The National Indian Youth Council, headquartered in Albuquerque, has filed a formal discrimination complaint against the Bureau of Indian Affairs, on behalf of a BIA employe.

Gerald Wilkinson, executive director of the NIYC, said Tuesday the complaint was filed with the Equal Employment Opportunity Division of the Dept. of Interior.

WILKINSON SAID he contacted BIA Commissioner Louis Bruce in Washington, D.C., on behalf of Mrs. Rita E. Keesis of Albuquerque, a Sioux employed for 18 years with the BIA's financial division.

Mrs. Keesis works in the BIA's division of financial management in the Albuquerque BIA office, Wilkinson said.

The complaint alleged that Mrs. Keesis had been harassed since filing an informal complaint last Thursday against her supervisors, alleging discriminatory job practices.

COMPLAINTS AGAINST BIA supervisors had been filed the week before by the NIYC on behalf of Matt Wacondo, a Laguna Pueblo Indian and also a BIA employe.

Wilkinson said he also was asked for "protection and investigation" by the FBI and Albuquerque Police Dept. of the alleged harassment.

The complaints charge that last Thursday night both Wa-

condo and Mrs. Keesis were harassed at their homes when "a car passed their homes several times at high speed, leaving black tire marks. The car also pulled up into their driveways at high speed, leaving marks."

A similar incident allegedly occurred at the Keesis home Friday and Saturday night.

Wilkinson said the automobile appeared to be the same or similar vehicle on each occasion.

NAMED IN the complaint are John T. Arkansas, chief of the BIA disbursement branch; Albert W. Bartlett, chief of the financial operations branch; Charles Hourigan, chief of the financial management division; Louis Bruce, BIA commissioner; Roger Morton, Secretary of the Interior, and President Richard Nixon.

Mrs. Keesis, 48, alleged she has "continually been harassed on the job by her supervisor, Mr. Arkansas."

THE COMPLAINT also alleges:

— "That she is subject to verbal abuse and intimidation on the job, because of her advocacy for Indians in lower (BIA) positions.

— "That Mr. Arkansas and Mr. Bartlett are biased and (that) only pre-selected people are given promotions.

— "That Mr. Arkansas

monitors her leave records and arrivals and departures in the office, which is not done for all employes.

— "That Mr. Arkansas assigns her work without adequate explanation, and then discredits her because the work is not completed correctly or on time.

— "That due to a recent auto accident, she was unable to perform certain tasks, her arm being in a cast; and that she was nonetheless forced to do work involving mobility she was unable to do."

WILKINSON SAID that the complaint also alleges that Arkansas has refused to acknowledge a doctor's letter concerning work limitations.

"As a result of all this," Wilkinson said, "Mrs. Keesis is due to be put in traction in the hospital this week."

The NIYC agreed this weekend, Wilkinson said, to provide "NIYC Indian patrols at the homes of Indian people being harassed and who are speaking up."

Wilkinson said the FBI had been "very sympathetic" in receiving the complaint of harassment. He said he also had contacted the U.S. Civil Rights Commission.

"When I talked to Commissioner Bruce, he said he would take a personal interest in this case," Wilkinson said.

***Photographs of Frank Roberts' home
are on file at the Commission.**

Exhibit No. 11

PRESENTATION BY LOUIS R. BACHICHA,
CHAIRMAN-EXECUTIVE DIRECTOR OF THE
EMPLOYMENT SECURITY COMMISSION OF NEW MEXICO,
BEFORE THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The State Employment Service, established more than 30 years ago in New Mexico, has provided basic manpower services from the very beginning. In this state, as in most other states, the Employment Service program was established in conjunction with an Unemployment Insurance program; and to the extent that Unemployment Insurance provided applicants with funds during a period of unemployment, this kind of supportive service was the only kind of resource the Employment Service had during those early days.

Immediately following World War II resources for more and more supportive services became available. Among those first ones was counseling and testing. The Employment Service GATB Aptitude

Exhibit No. 11—Continued

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Test for counseling purposes is known the world over as the best available counseling battery. It has been adapted and used by many foreign countries. From the very beginning the Employment Service's principal task was and still is the matching of a suitable worker with a job that he can do. We believe that we have developed remarkable expertise in this field. During recent years we have placed between thirty and thirty-five thousand men, women, and youth in jobs. Approximately two-thirds of these were different individuals.

Of these individuals placed, 9.4 per cent of them were Indians in Fiscal Year 1972. The 1970 Census for the State of New Mexico showed that only 7.2 per cent of the population in the State was American Indian. Indians made up approximately 7 per cent of our active file of job-ready applicants on June 1, 1972.

We believe that our record in the numerous supportive services which have been made available during the past ten years to us are equally favorable to Indians. As stated earlier, the Employment Service had no way to provide employability development services during the almost ten years following its establishment except what could be attributed to Unemployment Insurance benefit payments.

Although employment counseling and aptitude testing came shortly after World War II, most other resources did not begin to become available until the sixties, following the passage of the Manpower Development and Training Act. The Manpower Development and Training Act, which is still administered by the Employment Security Commission through its State Employment Service offices, represented the first really tangible employability development resource available to us. It meant that, to the limited extent of this resource, we could, in cooperation with the State Department of Vocational Education, offer vocational training for unemployed and underemployed applicants who could be made employable with relatively little additional training. During the more than ten years since MDTA was established, New Mexico's apportionment has not grown, even though the costs of training allowances have increased by at least one-third and the cost of institutional training has increased by that amount or more.

New Mexico's apportionment, which this year amounts to \$763,000, is for both training and training allowances. Our first MDTA project was a training course for stenographers in Socorro.

Exhibit No. 11—Continued

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From the standpoint of immediate placement, this first training project did not turn out so well. I believe it is significant, however, that one of the first large MDTA proposals which was approved for the State of New Mexico was the project which provided training to Navajos who were scheduled to open the new automated lumber mill at Navajo, New Mexico. This eight to ten million dollar facility at that time was the showplace of the lumber milling industry in the whole country, and we were proud to participate in training the more than one hundred mill workers who opened this Navajo Forest Products Industries facility.

At present we have three MDTA projects approved strictly for Indian applicants. The Eight Northern Pueblos Council project will train 80 people in various construction skills; the Picuris project will train 15 Picuris Pueblo residents in tribal art industries; and a Laguna Reservation project is training 22 residents in the use of the ancient craft of pottery making, using traditional methods and designs, for the industrial market.

We have been engaged during the past six months in the preparation of an MDTA project for the Navajo Nation for 360 unemployed

Exhibit No. 11—Continued

Navajo Reservation residents in construction trades such as operating engineers, oilers, and mechanics. We have every reason to believe that this project, which will bring many thousands of dollars worth of vocational training which is badly needed to the Navajo Nation, will be ready to start by December of this year or January, 1973.

We have noted over the years the gradual emergence of well-trained and highly capable Navajo leadership in manpower disciplines. In cooperation with the State Employment Services in Arizona and Utah, the New Mexico State Employment Service and the Employment Security Commission of New Mexico have developed a really large Hitchhike Program. This program provides that all regular manpower programs except Unemployment Insurance taking will be contracted to employees of the Navajo Nation, whose contract with the Employment Security Commission will provide reimbursement of the necessary funds. This program involves approximately \$250,000 with \$40,000 slotted for MDTA vocational training. This project will finance 15 Navajo employees for this reservation-wide work and an Employment Service coordinator and a secretary. This project will involve the Navajo Nation in the

Exhibit No. 11—Continued

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actual administration of a manpower program under contract with the Employment Security Commission. Navajo Hitchhike employees will have access to Employment Service job banks in the three states involved and will work with the three agencies as needed to place Navajos into jobs and, where necessary, into training.

Although we have no assurance that a Hitchhike Project for the Indian tribes and Pueblos along the Rio Grande can be funded with the currently available Department of Labor appropriation, we did offer to develop a similar proposal for the Indians in Central New Mexico in June of this year. We had had no response to our offer, which was made to the All-Indian Pueblo Council and to the Indian Affairs Commission, until recently. We sincerely believe that some action may be taken on this new Hitchhike proposal sometime soon.

Perhaps no other single manpower program performed by the Employment Security Commission has been more effective for employability development of Indians than the Concentrated Employment Programs which we administer under subcontract with the Office of Navajo Economic Opportunity (ONEO) and the North Central New Mexico

Exhibit No. 11—Continued

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Concentrated Employment Program. These manpower programs are designed to provide precisely the kind of service which the so-called hard-core unemployed need to make them competitive in the present-day labor market. The Navajo Concentrated Employment Program, more popularly known as CEP, provides this service to the entire Navajo Reservation. It provides for intensive employability development services to approximately one thousand Navajos, of whom approximately 514 are from New Mexico. The services include job orientation, basic arithmetic and English where needed, and institutional vocational training or on-the-job training, whichever is considered to be needed most. Surprisingly, 65 per cent or more complete all the services scheduled for them. Almost 100 per cent are placed in jobs. Those who are placed are eligible for and receive continued supportive services as needed during the first 90 days of their employment. This kind of service provides for the solution of occasional misunderstandings between the new employee and his employer, who may be hiring an Indian for the first time. The Employment Security Commission subcontract which provides funding for the Navajo CEP has been renewed each year by the Office of Navajo Economic Opportunity.

Exhibit No. 11—Continued

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The CEP subcontract which the Employment Security Commission has with the North Central New Mexico Concentrated Employment Program is similar in many ways to the one with the Navajo Nation, except that it also serves other minority groups. It was intended that the program provide for 450 enrollees during the past year and that one-half of these should be Indians. Although we have diligently tried and asked for and received assistance from North Central New Mexico CEP and the tribal and pueblo leadership to keep enrollments of Indians and non-Indians at approximately a 50-50 percentage, this has not been possible this year. It is hoped that continued efforts on the part of Commission, tribal, and CEP Central leadership will result in a better record before the year is completed. Problems of relocation for training and for jobs have reduced the number of enrollees into the CEP Program along the Rio Grande. Most pueblos have a communal organization, and a great deal of other training and employment is available to those who actually wish to accept it.

Exhibit No. 11—Continued

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We attach considerable importance to practicing what we preach. To the extent possible, during the period I have been Executive Director of the Employment Security Commission, I have hired minority group representatives whenever possible and especially in areas where a concentration of minority client groups exists. Admittedly, qualification standards have frequently prevented hiring individuals with the qualifications we need. We do not believe our standards are too high because tribal leaders apparently recognize this need and out-bid us for the employees we desperately need. It is also reasonable to us to provide the same trained staff to serve Indians, for example, as we provide to Spanish-surnamed clients or to Anglo clients.

We have not done badly despite the problems. 5.6 %
of our staff are Indians, and 76 % are in field offices (plus 5 known
vacancies)
where they can actually serve their own people.

All I've said may have sounded as if we believed that our services to Indian clients was adequate in every respect. We really think we can and should do more. We know, too, that we can't be

Exhibit No. 11—Continued

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complacent about the problems which confront minority groups everywhere.

That would surely result in a regression that no one should want. I

know we don't want it --- we want to make some progress, and that will

require the best talents of all of us working toward a common goal.

HEARINGS
BEFORE THE
UNITED STATES
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
ON
UTILIZATION OF MINORITY AND
WOMEN WORKERS IN
CERTAIN MAJOR INDUSTRIES



HEARINGS HELD
IN
HOUSTON, TEXAS
June 2-4, 1970

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One of our members was referred to two employers through the Texas Employment Commission for jobs which the Commission deemed the female applicant well qualified. In each case, the woman was told quite frankly that she would not be hired, in spite of her qualifications, because she was female. The first referral for this applicant was to the State Office of the Salvation Army. The woman was interviewed by a regional director of the Army who told her he could not hire her because his wife might be jealous if the woman and the regional director had to go away for one day on a business trip together. In the second case, the woman was told by the Texas Employment Commission to call a company here in Houston, to arrange for an appointment about a job. This woman called that office and the man who answered refused to interview her for the position. The only reason for the refusal was her sex, and this was frankly stated by the man on the phone.

In each of the above instances, the woman reported the matter to the Texas Employment Commission. She was told that they would discontinue accepting job orders from either of the employers mentioned. That, apparently, is the extent of their responsibility or capability in these matters.

Miss ROBERTS: May it please the Commission, I would like to offer the appendix to Dr. Hacker's report which was submitted yesterday, which contains suggestion to the EEOC, in response to the various reports that we had.

We'd like to offer at this time this exhibit. See Appendix, page 613.

Chairman BROWN: We'd be very happy to receive those, Miss Roberts, and we want to thank both, you and Miss Farley, for the excellent presentation, and for bringing to the attention of the Commission some of the problems that the women in this area are being faced with.

Miss FARLEY: Thank you, Commissioner.

Chairman BROWN: Our next witness represents, I believe, a change from the agenda, and certainly represents a first for the Commission. One minority group which has not been given the type of attention that I feel it should be given is certainly the American Indian, and while the Indian population in and around the Houston area is relatively small, there is a very substantial number of Indians, American Indians, located in the southwestern area of our country.

It's with a great deal of pleasure that the Commission, for the first time in any of its hearings, has had the opportunity to hear

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from an American Indian talking about their problems. Our witness will be Mr. Benny Atencio, who is a director of Tribal Community Action Programs, and in addition to that, he is a tribal secretary and spokesman, he's treasurer and chairman of the legislative committee of all the Indian Pueblo Council, and has served as secretary of the National Congress of American Indians.

Mr. Atencio, we're very pleased that you've taken the opportunity to be with us today.

TESTIMONY OF MR. BENNY ATENCIO

Mr. ATENCIO: Thank you. Mr. Chairman, Members of the Commission, my name is Benny Atencio. I am an Indian from Santo Domingo Pueblo, in New Mexico.

I appreciate having the opportunity to appear before this Commission to express, at least in part, some of the urgent needs for re-evaluation at all levels of Job Opportunity Practices.

To Indians and perhaps to some Chicanos, equal employment opportunity doesn't mean a damn thing.

First, let me make reference to one of your publications, "What you should know about Equal Job Opportunity." The publication points out some of the rights and how a person should go about filing a complaint as well as some of the responsibilities of the Commission. In the last paragraph of the second page, it tells us who is and who is not covered under Title VII of the Civil Rights Act of 1964. If that law still applies today, then among those *not* covered, according to your material, are agencies of the city, State and Federal Government, and also in broad terms, educational institutions whose employees are engaged in educational activities. Keep in mind that these agencies constitute the largest employers and because they are, equal employment opportunity is a meaningless phrase, because the very agencies already exempted and protected by law are the worst violators of employment practices. The people on the Action line within established agencies, that is, the people who are ultimately left with the decision to hire and fire *can* and *do* ignore the law.

Title VII of the Civil Rights Act of 1964 states that a person cannot be denied a job or fair treatment in the job because of discrimination on account of race, color, religion, sex or national origin.

The Indian has been subjected to systematic discrimination through the years; he is the most misunderstood, the most forgotten, the most neglected of all racial groups within non-Indian

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society. He is in a virtual no-man's land once he is relocated into the urban life. He is told that to succeed in urban life society, designed by white men, he must give up his own culture. So many of our young Indian people looking for economic survival in cities are really not comfortable with themselves. They get the brush-off by the city, state, and private health, welfare and employment agencies because of misconceptions that the Indians are all taken care of by the Federal Government.

The bureaucracies are taking good care of the Indian all right . . . by keeping him ignorant of his equal and just rights, but many younger Indians are beginning to speak out loud and clear, demanding equality . . . in areas of services, and jobs.

The Indians have some obvious handicaps: a language barrier, lack of formal education, lack of professional skills, not knowing the city ways, and more important, lack of understanding on the part of potential employers of Indian Culture. . . . All of these are contributing factors in most Indians' failure to cope with urban life.

It is amazing that after sincere and honest hearings like this, all sorts of memoranda go out from the offices of Department Justices and 'or department heads. Sometimes, when the heat is really on, a lot of the minority people who had been in the same seat for years suddenly get promoted and 'or a "show piece" gets hired. Like the best desk in the house, the show piece gets a place up front where he or she can be spotted immediately because that proves there is no discrimination in the place. Then when the personnel officers or directors testify, they can tell you they have X percentage of the minorities in high places. The challenges make many of the personnel officials angry so they put extra heat on their operations people to hire show pieces. This is unfortunate and disgraceful for there is no dignity in that kind of manipulation of human beings. Yet a person is willing to forgo dignity for a job which will mean a pay-check every week.

As Congressman Henry B. Gonzales said, "If you are hungry, Hope itself is a distant thing; and if you are defeated, promises of better things to come ring empty."

A man needs a pay-check to feed and cloth his family. Most of you people conducting this hearing would go mad without your next pay-check. Think about that for a moment gentlemen and ladies. What would happen in your house if you did not get your next pay-check? I mean no offense, but I am serious, what would happen in your house. . . . ?

How about the Chicano, or most assuredly, the Indian who

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can't get a job. Here is a minority, the color of his skin is different; drawn between the powerful forces of conflict, one demanding the preservations of rich native culture and the other demanding to get anglocized or lose out in the race of life. We become reduced to indignities, because like you, we need the paycheck.

Do you know what hopelessness is? Hopelessness is being turned down every time you ask about a job or a promotion; and everywhere you go, you get turned down because the other fellow, it turns out, was "more qualified." Or another example, a young Indian ambitious to get ahead goes to employment offices only to be told "he does not qualify for summer job because his parents are not on welfare assistance. Yet his parents must depend on \$90 a month old age pension checks for survival.

Hopelessness sets in, and a man, because he is only human, tells himself that there is no reason to keep trying. He doesn't even have the will to protest. That's what discrimination leads to; that's why the poor stay poor; that's what poverty and hunger are all about.

"Nobody can know who has not experienced it . . ."

President Johnson, at the Cabinet Committee Hearing on Mexican-American Affairs at El Paso, Texas, 1967, had this to say: "Nobody can know who has not experienced it, what it's like to be turned away at the personnel office because you have a strange accent. Nobody can know from the outside what it's like to have your children stumbling over words in a schoolbook because a teacher doesn't have the extra time to help them learn. Nobody can know, but those who have lived it, how a man wonders whether he will ever break free of the old cycle of following the crops, and give his son a better chance."

At this moment in time, gentlemen, there is no way to beat the system. The people on the action line: those who finally hire, fire and promote are still free to do pretty much as they please. Most of the front line office managers and supervisors have been in the bureaucratic system so long they retire in their jobs, and the system protects them. They have been around so long that they know all the tricks.

The first thing these action level people have going for them is security. . . . It is impossible to oust a long time Civil Servant, basically because it is impossible to *prove* wrong-doing. In fact, a long time bureaucrat is tougher to fire than pulling out of Viet-

nam. It is far easier for the upper echelon to find that their action line-man made his selection according to established policy

Let me outline some of those tricks: First of all when the heat is on, a "Show Piece" gets hired, this trick releases some of the pressure and things cool off.

Another is to write the specifications for a job in such a way that no one could possibly qualify for it except the one man or one woman the local chief wants in there. Let's say that a position is open in the Equal Employment Opportunity Commission Office and that it would be helpful to have a bi-lingual person in the position. If the Office Manager or the Personnel Specialist writes in the description that the candidate must be bi-lingual—he may lose the person he wants to promote or hire. So that bit of important qualification is conveniently omitted from the job requirement and the manager's choice remains in the running.

Pre-selection is not new, it is as old as prostitution, because that what it is. The manager naturally selects the "best" qualified person—also, the requirement happens to include an expertise that only the "choice" person happens to have. The Indian loses out because he is different and because he lacks necessary qualification. The Indian or any minority person not selected can scream discrimination to the high heavens, but there is no way in the world to prove it.

It works that way with initial hiring too, but its easier to pull off, because the candidates losing out do not know how to go about registering complaints or to whom they should go in confidence. Besides the EEOC's established procedures are so complicated and time consuming that the average person wouldn't bother to get involved. They would not win their case anyway . . . and even if they did—because maybe the heat was on at the time . . . they'll rot in the job before they are promoted. They may even be harassed into resigning. Finally if a minority group person does make it to the top—because he was able to endure enough heat periods, he is often placed in some ineffective job.

Recommendations to EEOC

So to overcome the built-in barriers to equal employment, I am recommending the following for immediate implementation:

1. The Equal Employment Opportunity Commission discontinue their discriminatory practices and start hiring sincere and dedicated Indians as officers and other police staff to work with Indians and agencies to insure proper

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- coordination and cooperation in all phases of Indian problems.
2. That Equal Employment Opportunity Commission under- take a concerted effort of keeping tribal leaders informed on policies and procedures in filing complaints, and also extra efforts in trying to simplify those procedures.
 3. That Equal Employment Opportunity Committees be set up in convenient locations for out Indians to get to.
 4. That Equal Employment Opportunity undertake an edu- cational program to inform potential employers on Indian Culture and their religious values. This is important be- cause, to the Indian his religious beliefs are integrated into everything he thinks, says and does; and conversely into everything he will not say and will not do.
 5. That tribal leaders should be utilized as consultants in all special program development projects, taking into caution that no one tribe speaks for the other.
 6. That trade unions and employers should be approached to sponsor meaningful pre-apprenticeship programs to help qualify Indians and other minority groups for training under the MDTA/OJT programs which unfortunately have strict requirements.
 7. Implementing the tribal leaders recommendation of setting up an Indian Desk at policy making level within the Equal Employment Opportunity Commission.

When an Indian is impatient with the state of his people and expresses his concern for reforms, he is accused of being hostile, an agitator, or a militant, but when a white man makes a similar expression or even demands . . . it is called progress, but our children are as smart as your children. They will learn the jobs quickly enough if given the chance. They will have reason to go to school and work harder for higher education, not just voca- tional skills; they will have reason because hopelessness will be changing to hopefulness and that will bring out the best in people, all people, maybe even the most prejudiced of all people.

We have to start sometime, Gentlemen, and I ask you only, why not now . . . today.

Chairman BROWN: Thank you very much, Mr. Atencio.

Let me just briefly respond to some of these statements which you have made and some of the suggestions which you have made.

First, as you have indicated, this Commission has no jurisdic- tion over any Federal, State or City Government, and this is un- fortunate, I believe, sometimes.

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Second, you also have indicated—we have no jurisdiction over the professional staff of any of the educational institutions. Perhaps this might change in the future.

In terms of what we, as a Commission, have done, on our own policy, I might point out, to you, that we do have Indians on our staffs in some of our offices; and we feel that we are always recruiting to get additional Indians, as well as all other minorities on our staffs at the Commission at all levels, and I would suggest, to you, that if you have anyone who you feel has any skills that the Commission could use, we certainly would be very appreciative if you'd bring them to our attention.

I would also say, to you, that one of my special assistants, who has been put on in the past six months, to deal very specifically with the problem of the American Indian and particularly here in the Southwest, is Mr. Eliseo Carrasco, and that's one of his primary responsibilities.

As a matter of fact, some ninety percent of his time is devoted to doing just exactly the things which you have suggested to the Commission. As far as MDTA program, you know, we have no jurisdiction over those; these are the responsibilities of the Labor Department, but I do believe that we will continue to utilize all the resources at our command. We would like to work along with you, and other persons in the various areas of the country, and if you feel there is anything we are not doing, if there is anything we can do better, we would be deeply appreciative if you would bring these to our attention. Thank you once again, for your participation here.

Commissioner XIMENES: I know you work in the Pueblo area, and I'm very much in agreement with the frustration you noted because I've lived with them. In regard to what the Commission can do, you will note that the various tribal councils and the Bureau of Indian Affairs is excluded from our jurisdiction. I don't know why it was done. I have no idea, but that's what's happened, and you might, when you get back to New Mexico, talk to the tribal leaders and find out if it's possible to change the law so that we do have jurisdiction over the reservations.

Mr. ATENCIO: I'd like to ask, if I may be permitted, Mr. Chairman—let me ask this one question:—

Chairman BROWN: Certainly.

Mr. ATENCIO: You do have equal employment opportunity officers within the established agencies.

Is this through the Commission or is it through their own departments?

Chairman BROWN: Well, you see, those employment officers are in federal agencies, and we have no jurisdiction over that. That's solely within the area of responsibility of the Civil Service Commission, and that's why I say there is a difference as to what our responsibility is, in the areas that we can do some good.

In the areas where we do have jurisdiction, certainly, in those areas, we should do everything we possibly can, but when it comes to the Federal Government, as I have indicated, those EEO officers in the Federal Government structure do not come within the purview of this particular Commission.

We have no control over them, whatsoever, and I would suggest, to you, that the complaints of that type be directed to the Civil Service Commission, and certainly, perhaps, even if it would do any good, to the attention of the Bureau of Indian Affairs.

Mr. ATENCIO: We would appreciate all your help, if you could coordinate all of this at the level that you're at.

Chairman BROWN: We certainly will do all possible to bring it to the attention of other agencies of the Federal Government. We have done so on other occasions, and we will continue to do so.

Thank you for your attendance here today.

Mr. ATENCIO: Thank you.

Exhibit No. 13

(FACSIMILE)

RESOLUTION

WHEREAS THE ALL INDIAN PUEBLO COUNCIL has learned that the State of New Mexico, noting by and through the State Engineer, is contemplating initiating court action before the first of January 1966, seeking to adjudicate the nature and extent of water rights on certain of the Indian Pueblos, and

WHEREAS THE ALL INDIAN PUEBLO COUNCIL is very much concerned with protecting the water rights of all of the Pueblos in New Mexico because of the immediate relationship between their present livelihood and their future economic development and life;

IT IS HEREBY RESOLVED that the Bureau of Indian Affairs and its Commissioner, Philleo Nash, and the Department of the Interior and its Secretary, the Honorable Stewart L. Udall, are requested to do everything possible to make available information in regard to New Mexico Pueblo water rights;

AND FURTHER, that the Bureau of Indian Affairs be requested to alert the Department of Interior Solicitor and the U.S. Department of Justice of the forthcoming litigation so that they may be prepared to defend and protect the interest of the Pueblos.

IT IS FURTHER RESOLVED that the Honorable Domingo Montoya, Chairman of the All Indian Pueblo Council of New Mexico be given the necessary authority and latitude to take whatever actions are desirable to attain the above results.

/s/ Domingo Montoya
Chairman, All Indian Pueblo Council

/s/ Diego Aberta
Chairman, Irrigation Committee of the
All Indian Pueblo Council

CERTIFICATION

This is to certify that at a meeting of the ALL INDIAN PUEBLO COUNCIL OF NEW MEXICO held on November 3, 1965, the above resolution was adopted unanimously.

/s/ Paul J. Bernal
of the Meeting

Exhibit No. 14

Presented before the United States Commission on Civil Rights at the Albuquerque Convention Center, Garden Level, 401 Second Street, NW, Albuquerque, New Mexico, on November 15, 1972.

Mr. Chairman, Commission Members, first I want to welcome you to the Land of Enchantment, home of the Pueblo Indians, Navajo, Apache tribes and Ute tribe. This particular area you are visiting ante-dates United States history. It's rich in history and deep in legal debate.

The Santa Clara Pueblo Council has a very vital interest in the area I am about to testify, which includes seven areas. Our concern has been voice on numerous occasions. We reserve the right to other areas we may omit here.

My name is Lawrence P. Singer, I am an officer (Interpreter) of the Council of Santa Clara Pueblo, also served as a Lt. Governor and Representative in the past.

Examples:

1. King Philip of Spain in Madrid, in March 16, 1643 promulgated a statute (Law 8, title 12, book 4, De Recopilacion de Indias) it may be available in Congressional Library. The section is as follows.

"We ordain that the sale, improvement and arrangement of lands shall be made with regard to the Indians, that there may be left to them all the lands which may belong to them, even more as well to individuals as to communities, also waters, and aqueducts (acequias) may have been made or other improvements, whereby through their personal industry they may have been enhanced, shall be in the first place reserved for them, and in no event shall they sell or alienate them; and the judges, whose business it is, shall specify the Indians that may be found on the lands, and the lands that may remain to each one of the tributaries, old men, reserved men, caciques, governors, absentees, and communities."

2. During the Pueblo Lands Board Act, Act of June 7, 1924, 43 Stat. L.636, Section 17 a substantive law, was to prevent future disputes, but as you can see it did not. Section 17 reads as follows:

"No right, title, or interest in or to the lands of the Pueblo Indians of New Mexico to which their title has not been extinguished as hereinbefore determined shall hereafter be acquired or initiated by virtue of the laws of the State of New Mexico, or in any other manner except as may hereafter be provided by Congress, and no sale, grant, lease of any character, or other conveyance of lands, or any title or claim thereto made by any pueblo as a community, or any Pueblo Indian living in a community of Pueblo Indians in the State of New Mexico, shall be of any validity in law or in equity unless the same be first approved by the Secretary of the Interior."

Exhibit No. 14—Continued

3. August 11, 1951 before Indian Claims Commission, the element of water was not considered by the Commission. We expressed our concern in this area.

4. November 21, 22, 23, 1967, Albuquerque Regional Meeting called by Commissioner Bennett. Subsequently, a book was published by the Department of Anthropology, Washington State University, Pullman, Washington, 99163, title: Northwest Anthropological Research notes. Comment was made. Southwest is concerned more with irrigation, water and mineral rights.

5. February 26, 1970, Hearings on Extension of the Underground Basin in Rio Arriba, Sandoval and Taos Counties. Attending the Hearing was Lt. Governor Paul Tafoya, Lawrence P. Singer and Mr. Thomas A. Garrity, Jr., Attorney-Advisor for the Department of the Interior, Albuquerque, New Mexico. No objections or challenges were made by our trustee. We were assured by Mr. State Reynolds and Mr. Paul Bloom that it would not effect Indian water. We are skeptical of this verbal statement.

6. January 3, 1972, at the Albuquerque Indian School, Albuquerque, New Mexico, before Senator Kennedy's Administrative Practice Subcommittee Field Hearings, we again expressed our concern on water.

Concerns

I. Santa Clara Grant located in Rio Arriba and Santa Fe Counties, a checkerboarded area with private claims extinguished during 1924 Lands Board Act. In this area we want the State Engineer to stop approving and granting permits for wells and for other purposes within the exterior boundaries and lands contiguous and adjacent. Reason the underground basin and surface rights have not been adjudicated. He is pre-empting our rights, arrogating without proper authority, and usurping the courts rights. We want the Bureau of Indian Affairs appropriate department charged with this responsibility to monitor, past, present, and future permits given by the State Engineer. We pray that Section 17 of the Pueblo Lands Board Act be invoked.

II. Executive Order Reservation, located in Rio Arriba, Sandoval Counties, especially the lands which are immediately adjacent to this area for the same reasons as stated above in Paragraph I. A portion of the water shed is our main concern which now lies just outside our jurisdiction.

III. Diversion of water. Since the Rio Grande is an Interstate and International stream, so much interest is always generated.

a. Diversions have been made in the past and plans for future diversions such as that of the El Llano Canal. We object strongly with present explanation and facts presented to us. Our rights are again in jeopardy. People and additional lands who have not enjoyed irrigation from the Rio Grande in the past will if the plans are realized will compete with us for this water.

Exhibit No. 14—Continued

b. In 1924, the Pueblo Lands Board Act, a diversion took place without the consent of the Pueblo, of the Santa Clara Creek which we have used since time immemorial, by the non-Indian neighbors of the village of Guachupangue. The Pueblo Lands Board was moved to comment, as follows:

"It does not appear from the records in the office of the State Engineer that the people of Guachupangue have ever at any time complied with the State laws providing for filing upon or claiming this water so taken and used."

We assert a recommendation should not be interpreted as an act by the Board to settle this question or extinguish our right to this ancient stream. We claim its exclusive use.

IV. Transfer of Water Rights. We strongly oppose this procedure and relocating in our area.

Reasons:

1. availability of water.
2. density of population
3. economical growth
4. quality of water
5. land subdivision development
6. geographic location-amenities
7. other demands

V. Because of the policy of aggrandizement pursued by the City of Espanola in annexing property.

1. Initially within the exterior boundary of Santa Clara Pueblo Grant.

2. Presently, it has now extended its jurisdiction beyond our exterior boundary and is now obligated to serve this new people and will start exporting the water and importing sewage water.

VI. Offers of judgement, we are oppose to this method at this initial phase of the court proceedings. Reasons:

1. We realize that if the State and non-Indians reach satisfaction to the offer, they will join forces to contest that mutual agreement.

2. We feel we are placed at a disadvantage because it gives efficacy and it would be difficult for us to discredit and form an effective argument.

3. We reserve every opportunity to challenge, if this reservation is not pleaded by our trustee.

Exhibit No. 14—Continued

VII. We claim that this God-given water for the Pueblo and its people for domestic, commercial, industrial, recreational, livestock, wildlife, medicinal purposes, farming, fire suppression and when certain ceremony is perform it becomes consecrated water to bless our people, homes, village, crops and all things the Good Lord has given us dominion over.

Thank you.

Lawrence P. Singer

Lawrence P. Singer

Enclosures: Exhibits 1, 2, 3, 4*

*Maps attached to this exhibit are on file at the
Commission.

Exhibit No. 14—Continued

RESOLUTION

whereas, the Santa Clara Tribal Council has a duty to account and perform, defend, protect and prevent the disposition, sale of tribal assets or interests, by authority granted unto it by the constitution and Bylaws of Santa Clara Pueblo, New Mexico; tribal customs and laws, and

whereas, a greater responsibility and obligation rests with the U. S. Government as trustee to be exercised in a judicious and prudent manner, its initial responsibility and obligation under international law; legislative and congressional acts it subsequently enacted, to protect and benefit the Pueblo Indians; or enjoin the State of New Mexico by prohibiting from legislating or exercising governmental power over the Indians as expressed in the Enabling Act or court decrees (State and Federal), and,

Whereas, a public hearing is scheduled to be heard on November 14 and 15, 1972, at the Albuquerque Convention Center, 401 Second Street, N.W., Albuquerque, New Mexico; and

Whereas, Mr. Lawrence F. Singer, an officer (Interpreter) of the Council of Santa Clara Pueblo, New Mexico, is anticipating to be served with a subpoena to testify; and

Therefore, we the Governing body do authorize and encourage his participation on the subject of administration of justice it is receiving or not receiving relative to the protection and preservation of water rights.

CERTIFICATION

The Governing body of Santa Clara Pueblo duly assembled at Santa Clara Pueblo on November 8, 1972 adopted this resolution by vote of 14 for and 0 against.


(Governor)

ATTEST:

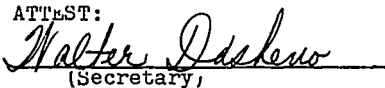

(Secretary)

Exhibit No. 15

February 28, 1958

Mr. John B. Kelliaa
Superintendent, Jicarilla Indian Agency
Dulce, New Mexico

Dear Mr. Kelliaa:

Some time ago, the Jicarilla Council requested that the BIA take necessary action to protect the water rights of the tribe in the San Juan Basin. There has been some work, and a number of conferences on this matter, but as yet we are not informed of any definite action being taken with the proper authorities to secure allocation of any specified amount of water to the tribe.

I believe that there has been some misunderstanding of the immediate problem. The first thing that must be done is to determine the amount of water which could be applied to beneficial use for the tribe and which at present flows into the San Juan Basin. A small quantity of water has been diverted from the Navajo River for the use of the Government and the tribe, and a small quantity is being impounded in artificial lakes. It is my information, however, that the majority of the water that could be used beneficially on the reservation is not impounded or used at the present time.

In order to take necessary action to protect the interests of the tribe, we must know how many acres of land could be irrigated from water sources on, or across the reservation, and at a cost that would not be excessive based upon a reasonable expectation of returns. If the BIA has this information, it should be made available to the tribe, and if such information has not been obtained, the tribe should be informed of what should be done to determine the amount of acres of land that could be irrigated and the amount of

Mr. John B. Keliiaa

February 28, 1958

Page 2.

water that could be beneficially used on the reservation from surface waters now flowing into the San Juan Basin.

If the BIA does not have this information and does not have the funds or personnel to obtain it, it is my opinion that the tribe should employ a qualified person for this purpose.

The immediate problem is to make the surveys and cost estimate necessary to determine the amount of water that can be beneficially used on the reservation. When this is done, the water rights of the tribe can be presented to the officials and departments having control of the allocation of the San Juan Basin water.

Sincerely yours,

Roy T. Mobley

STM:sb

cc: Mr. Garcia

In the Capital

Water Rights Suit Effects 'Far Reaching'

By WAYNE S. SCOTT
Of the Journal's
Santa Fe Bureau

SANTA FE — Conservation of water is one of the aspects in which New Mexico, through its laws and agencies, is far ahead of most states of the nation.

In 1907, the legislature created the office of territorial engineer, and assigned him the task of supervising the state's surface waters, overseeing their use and protecting prior users against encroachment on their supply by newcomers.

The 1931 Legislature added underground waters to those to be protected. After declaration by the engineer of an "underground water basin," no one can drill an additional well in the area without authority of the state engineer.

In case an existing user feels his water supply would be threatened by the additional well, this authority cannot be granted except after a hearing with each side permitted to give testimony.

This underground water law was one of the first, if not the first, in the nation. It is still a model for states trying to catch up in preservation of underground waters.

The 1967 Legislature created the Water Quality Control Commission which has set up standards and regulations to abate water pollution. This commission is composed of heads of a number of state agencies, with enforcement chiefly in the hands of the Health and Social Services Dept.

NEW MEXICO is one of the western states where water supplies are inadequate to sustain a great population or industries which use vast quantities of water.

Because of this, its laws pertaining to water are designed more to regulate its use than for esthetic purposes.

"Beneficial use shall be the basis, the measure and the limit of the right to the use of water," states the 1907 law which established the office of territorial — now state — engineer. The same law states all surface waters "being to the public and are subject to appropriation for beneficial use."

The language — and other language in details of the law — means a person who has started to use water for a "beneficial purpose is to be protected in his use of that amount of water against persons who later might want to use from the same source. The same protection was afforded users of underground waters by the 1931 law.

THERE IS STILL a big question in some parts of the state as to just who has the "right" to use water, and how much.

The biggest such question exists in the Rio Grande Valley. A suit now pending before the U.S. District Court seeks to determine which land owners have the "right" to use water. The decisions might have a far reaching effect on most residents of the area — and on land developments, such as the Cochiti Lake City, which are on Indian land.

The pueblo Indians have always maintained they are exempt from water laws and are entitled to as much water as they can use. Insofar as usage by Indians themselves is concerned, this claim has not been challenged. But the question is whether this right extends to non - Indians who settle on lands leased from a pueblo.

THE SUIT may take a generation or so for a decision. Reason is Rio Grande water was put to "beneficial use," first by the Indians and then by the Spanish - Americans, centuries before the 1907 water law was passed. In fact, all the land in the Rio Grande Valley above Elephant Butte Dam now being irrigated was being irrigated in 1907.

This land has what is known as a "right" to irrigation water, because of its prior usage. This right was confirmed by the 1907 territorial law and the 1912 State Constitution. Priority of "rights" is

determined by order of the start of usage
—dates which will be extremely difficult
for the court to establish.

No such problem exists in the Elephant Butte Irrigation District, the Arch Hurley Irrigation District or other districts where farming has started since 1907. Usage in these districts is determined by permits issued by the state engineer or, in the case of federal reclamation projects, by federal laws and regulations.

NEW MEXICO'S wisdom in placing underground waters under control is seen in the plight of some other states which have not done so — notably Colorado.

Until recently, Colorado had no control over water usage. One result was she became indebted to New Mexico and Texas, under the Rio Grande River Compact, to the extent of 939,000 acre feet at the end of 1955.

New Mexico and Texas then brought suit to force Colorado to comply with the compact. That suit is being held in abeyance, under a stipulation requiring Colorado to meet her annual commitments. She now is attempting to get Congress to authorize a \$15-million project to pump water from the "closed" San Juan Basin into the Rio Grande, to decrease the debt.

RUMLRAI

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1967

MR HARRISON LOESCH ASST SECY FOR PUBLIC LAND MGMT DEPT OF THE
INTERIOR OFC OF THE SECY WASHINGTON DC

TO MR GARNET L GATES VICE PRESIDENT SALT RIVER PIMA-MARICOPA
INDIAN COMMUNITY RTE 1 BOX 188 SCOTTSDALE AZ 85256

BY

THE PRESIDENT HAS REQUESTED ME TO RESPOND TO YOUR TELEGRAM OF JULY
7, 1972, RELATING TO SEVEN CASES INVOLVING ALLEGED TRESPASS ON SALT
RIVER RESERVATION. AS YOU KNOW, THE SEVEN CASES ALL INVOLVE LAND
LOCATED IN AN AREA WHICH, UNTIL JANUARY 17, 1969, HAD BEEN CONSIDERED
AS BEING OUTSIDE THE RESERVATION AND WHICH HAD BEEN ADMINISTERED BY
THIS DEPARTMENT AS PUBLIC LANDS. FOR SEVERAL YEARS THERE HAD BEEN
DISAGREEMENT AS TO LOCATION OF A PORTION OF SOUTHERN BOUNDARY OF
RESERVATION. ON JANUARY 17, 1969, THE SECRETARY OF INTERIOR DETERMINED
THAT SOUTHERN BOUNDARY OF RESERVATION WAS IN FACT IN SOUTHERN CHANNEL
OF SALT RIVER. BECAUSE OF FURTHER QUESTIONS REGARDING THE PRECISE
LOCATION OF SOUTHERN BOUNDARY I REVIEWED THIS MATTER AND FURTHER
FOUND ON NOVEMBER 17, 1971, THAT THE SOUTH BOUNDARY OF THE RESERVA-
TION SHOULD BE ACCEPTED AS BEING IN THE SOUTH CHANNEL OF THE
RIVER AS IT EXISTED DURING THE 1965 - 1966 FLOODS. DURING THE MANY

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YEARS WHEN THE AREA INVOLVED WAS CONSIDERED BY THIS DEPARTMENT AS PUBLIC LANDS OUTSIDE RESERVATION, PATENTS WERE ISSUED, WITHDRAWALS WERE MADE, RIGHTS-OF-WAY GRANTED, PERMITS ISSUED, AND MINING CLAIMS LOCATED, ALL ON THE ASSUMPTION THAT LANDS WERE PUBLIC LANDS. THE SEVEN CASES YOU REFERRED TO INCLUDED AREAS COVERED BY TWO GOVERNMENT PATENTS, AT LEAST TWO WITHDRAWALS, AND AT LEAST THREE MINING CLAIMS. ON JANUARY 16, 1969, YOUR TRIBAL COUNCIL IN RESOLUTION NO. SR-673-69 ACKNOWLEDGED THE EXISTENCE OF NINE PATENTS AND THREE RIGHTS-OF-WAY IN THE GENERAL AREA IN QUESTION AND STATED AS FOLLOWS: "WHEREAS, THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY HAS NO DESIRE TO CHALLENGE THE TITLES CONVEYED IN SUCH PATENTS OR THE INTERESTS GRANTED IN SUCH RIGHTS-OF-WAY. NOW THEREFORE, BE IT RESOLVED THAT THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY HEREBY WAIVES ANY INTEREST IT MIGHT HAVE IN THOSE LANDS COVERED BY THE PATENTS AND RIGHTS-OF-WAY DESCRIBED ABOVE, AND WHICH MAY BE FOUND TO BE LOCATED WITHIN THE BOUNDARIES OF THE SALT RIVER INDIAN RESERVATION." ONE OF THE CASES REGARDING WHICH YOU HAVE REQUESTED THIS DEPARTMENT TO HAVE THE DEPARTMENT OF JUSTICE INSTITUTE AN ACTION FOR DAMAGES INVOLVES A GOVERNMENT PATENT LISTED IN THAT RESOLUTION, NAMELY, PATENT 404842, ISSUED MAY 5, 1914. AS TO THE REMAINING SIX CASES, ONE OF WHICH ALSO

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INVOLVES A GOVERNMENT PATENT NOT LISTED IN THE TRIBAL RESOLUTION, NAMELY PATENT 554, ISSUED JUNE 13, 1891, THE OPINION OF A FORMER SOLICITOR OF THIS DEPARTMENT UPON WHICH THE SECRETARIAL DETERMINATION OF JANUARY 17, 1969, WAS BASED, SOLICITOR'S OPINION M-3677B OF JANUARY 17, 1969, SUGGESTS THE POSSIBILITY OF REMEDIAL LEGISLATION TO EXCLUDE PATENTED AND RIGHTS-OF-WAY AREAS FROM THE RESERVATION AND CONFIRM THE TITLES THERETO, AND ALSO SUGGESTS THAT FAIRNESS TO PERSONS ASSERTING INTERESTS IN THE LAND BETWEEN THE TWO CHANNELS OF THE RIVER UNDER THE MINING AND OTHER PUBLIC LAND LAWS WOULD REQUIRE THIS DEPARTMENT TO PROMPTLY REQUEST THE DEPARTMENT OF JUSTICE TO COMMENCE APPROPRIATE ACTIONS TO OBTAIN JUDICIAL DETERMINATIONS OF THE MERITS OF SUCH CLAIMS. BY LETTER OF APRIL 4, 1969, I ADVISED ONE OF YOUR ATTORNEYS, MR. ARTHUR LAZARUS, THAT THE VALIDITY OF THE CLAIMS OF PERSONS OTHER THAN THOSE LISTED IN YOUR TRIBAL RESOLUTION OF JANUARY 16, 1969, WILL PROBABLY HAVE TO BE JUDICIALLY DETERMINED. BY LETTER OF APRIL 18, 1969, I ADVISED THE ATTORNEY FOR ONE OF THE PARTIES HAVING MINING CLAIMS IN THE AREA THAT THIS DEPARTMENT EXPECTED TO CALL UPON THE DEPARTMENT OF JUSTICE TO COMMENCE ACTIONS TO QUIET TITLE TO THE LANDS IN CONTROVERSY AS SOON AS A SURVEY OF THE BOUNDARY CAN BE COMPLETED AND APPROVED. AS YOU ARE AWARE, AT

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THE PRESENT TIME ALTHOUGH THE BUREAU OF LAND MANAGEMENT HAS STAKED ON THE GROUND THE LOCATION OF THE SOUTH BOUNDARY IN THE AREA IN QUESTION, THE SURVEY IS NOT YET FINAL AND THE PROTEST PERIOD HAS NOT EXPIRED. I REITERATE MY STATEMENT IN MY TELEGRAM OF JULY 5, 1978, TO YOUR TRIBAL ATTORNEY, MR. ROYAL MARKS, THAT I WILL ADMINISTRATIVELY SUPPORT THE POSITION THAT TITLE TO THE LAND INVOLVED IS IN THE UNITED STATES IN TRUST AND WILL ATTEMPT TO RESOLVE THE PROBLEM ADMINISTRATIVELY. AT SUCH TIME AS THE SURVEY OF THE SOUTH BOUNDARY HAS BECOME FINAL, IF PROBLEMS OF TITLE TO THE LAND HAVE NOT BEEN ADMINISTRATIVELY RESOLVED I WILL REQUEST THE SOLICITOR OF THIS DEPARTMENT TO REFER TO THE DEPARTMENT OF JUSTICE FOR APPROPRIATE QUIET TITLE ACTIONS ALL CASES INVOLVING LANDS OTHER THAN THOSE INVOLVING PATENTS OR THOSE LISTED IN YOUR JANUARY 16, 1969, RESOLUTION. AS YOU KNOW, NO STATUTE OF LIMITATIONS PROBLEM IS INVOLVED WITH QUIET TITLE ACTIONS. AS FAR AS SEEKING DAMAGES FROM PERSONS WHOSE USE AND OCCUPANCY IS DERIVED FROM THIS DEPARTMENT AND WHICH RESULTS FROM A MISTAKEN ASSUMPTION OVER THE YEARS IN THIS DEPARTMENT THAT THE LANDS INVOLVED WERE PUBLIC LANDS, WHICH ASSUMPTION ONLY PROVED TO BE MISTAKEN ON JANUARY 17, 1969, BY VIRTUE OF THE SECRETARIAL DETERMINATION OF THE BOUNDARY, I CANNOT IN GOOD FAITH

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REQUEST THE DEPARTMENT OF JUSTICE TO SEEK DAMAGES FROM SUCH PERSONS.
 IT IS ESTABLISHED THAT AS FAR AS THE QUESTION OF SEEKING DAMAGES FROM
 THIRD PARTIES ULTIMATELY RESULTING FROM A MISTAKEN FACTUAL ASSUMPTION
 THAT EXISTED IN THIS DEPARTMENT FOR DECADES IS CONCERNED, THIS SITU-
 ATION APPEARS TO PRESENT A CLASSIC EXAMPLE OF THE CONFLICT OF INTEREST
 WITH WHICH THIS DEPARTMENT IS OFTEN FACED AND CAN ONLY NOTE THAT THE
 INDIAN TRUST COUNSEL AUTHORITY LEGISLATION WHICH HAS BEEN SO STRONGLY
 SUPPORTED BY THIS ADMINISTRATION WOULD RESOLVE SOME OF THESE BASIC
 CONFLICTS OF INTEREST IN WHICH THIS DEPARTMENT SO OFTEN FINDS ITSELF.
 DE

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CONFIRMATION COPY
THIS IS CONFIRMATION OF A TELETYPE MESSAGE
 TO: *Allen Blackwater To: Peter...*
 CH *7-17-72*
 OFFICE OF THE ATTORNEY GENERAL
 FEDERAL BUREAU OF INVESTIGATION
 WASHINGTON, D.C. 20535
 TEL. NO. 202-512-2000

NNNN
 47181 WLRAL

THE RIGHT TO REMAIN INDIAN

The Failure of the Federal
Government to Protect Indian Land
and Water Rights

Submitted to the U. S. Commission on Civil Rights

by

The All Indian Pueblo Council, Inc.
Albuquerque, New Mexico

November 8, 1972

PREFACE

This paper is submitted pursuant to a contract with the U. S. Commission on Civil Rights, in preparation for hearings to be held in New Mexico during November 1972. The protection and preservation of the land and water rights of the Indian tribes in the Southwest is as vital as any problem which now confronts these tribes.

The Pueblo Tribes of New Mexico have depended on the Rio Grande to sustain their lives for thousands of years. To the Pueblo Indian, the Rio Grande is a living part of the balanced scheme of nature, with which the tribes maintain a close relationship. Thus, the river is a part of the very life and existence of the Indian. When the river dies, so does the Indian.

That is why the Pueblo Indians, as well as their brother tribes all over the West, are deeply concerned with the events which have occurred within the past 75 years. Those events limit the availability of water to them and, therefore, threaten their own existence. They realize, as do their brother tribes in Arizona, that they must be aware and active in the protection of those rights

Exhibit No. 17—Continued

which are paramount to all others.

The discussion which follows: (1) considers the relationship which exists between the Indian Tribes and the United States Government referring to the Pueblo Tribes as an illustration; (2) traces the development of the legal basis for protection of the tribal rights to use water - the Winter's Doctrine; (3) chronicles legislative and administrative events affecting the Pueblo Tribes and neighboring tribes in both New Mexico and Arizona; and, (4) interprets those events.

I. Relationship of the U. S. to the American Indian Tribes.

The subject of the relationship which exists between the Indian tribes and the U. S. Government has been succinctly stated in a memorandum submitted to the Commissioner of Indian Affairs, Bureau of Indian Affairs, by William H. Veeder, Water Conservation Specialist with the Bureau of Indian Affairs. A segment of that memorandum is included here as a discussion of the unique relationship existing between the U. S. Government and the Indian tribes, particularly with the Pueblo tribes of New Mexico.

Immemorial Rights of the Pueblo Indians - National Obligation to Protect Them.

Long prior to the time that the European culture first invaded their lands and then engulfed them, the Pueblo Indians had created and maintained a high degree of civilization predicated upon their use of the waters of the Rio Grande and its tributaries. Their lives were oriented to the River which made habitation possible in contrast to the harsh desert environment which extended for miles both east and west from their ancient homes.

Spain and Mexico during their sovereignty respected the Pueblo Indians and their property interests, seeking to preserve and protect them.^{1/}

In 1848 when the National Government under the Treaty of Guadalupe Hidalgo assumed sovereignty over the area occupied by the Pueblo Indians there was established between it and the Indians the constitutional relationship of guardian and wards.^{2/} On the subject the Highest Court had this to say:

"...it is not necessary to dwell specially upon the legal status of this people under either Spanish or Mexican rule, for whether Indian communities within the limits of the United States may be subjected to its guardianship and protection as dependent wards turns upon other considerations.....Not only does the Constitution expressly authorize Congress to regulate commerce with the Indian tribes, but long continued legislative and executive usage and an unbroken current of judicial decisions have attributed to the United States as a superior and civilized Nation the power and the duty of exercising a fostering care and protection over all dependent Indian communities within its borders, whether within its original territory or territory subsequently acquired, and whether ^{3/} within or without the limits of a State."

^{1/} See Handbook of Federal Indian Law, Cohen, pp. 383 et seq.

^{2/} United States v. Sandoval, 231 U.S. 28, 46 (1913).

^{3/} United States v. Sandoval, 231 U.S. 28, 45-46 (1913).

The Court further stated:

"...it may be taken as the settled doctrine of this court that Congress, in pursuance of the long-established policy of the Government, has a right to determine for itself when the guardianship which has been maintained over the Indian shall cease."^{4/}

Fulfillment of that trust obligation is the fundamental feature of this consideration. From the broad spectrum of pronouncements by the Supreme Court it is abundantly manifest that one of the principal aspects of the Nation's trust responsibility in the words of that Court, is the assurance to the Pueblo Indians - indeed, all Western Indians - that they shall have a

"...peaceable and unqualified possession of the land in perpetuity."^{5/}

Most cursory knowledge of the Pueblo Indians, their mores and basic concepts of life, reveals that their ancient lands and the means of maintaining them are perhaps foremost in their thinking. Logical sequitur of that fundamental concept of the Pueblo Indians - and very much a part of it - is their insistence that their equally ancient rights to the use of water in the Rio Grande and

^{4/} Ibid., 231 U.S. 28, 46 (1913).

^{5/} United States v. Shoshone Tribe of Indians, 304 U.S. 111, 116 (1937).

its tributaries be protected and preserved. They - perhaps more than any other people - know that the continuation of their homes and abiding places is inextricably interrelated to those rights to the use of water. That the United States has an obligation to preserve those rights is well stated in these terms respecting the Colorado River Indians:

"...The broad powers of the United States to regulate navigable waters under the Commerce Clause /which gives rise to the trust relationship with the Indians/ and to regulate Government lands under Article IV, Section 3 of the Constitution" invests the Nation with authority "to reserve water rights for its /Indian/reservations and its property."6/

Keyed to the Nation's trust responsibility are the criteria which govern the fulfillment of it. On the subject it has been stated:

"The trustee /guardian/ is under a duty to the beneficiary /ward/ in administering the trust to exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own property; and if the trustee has greater skill - /here engineers, hydrologists, soil scientists, contract negotiators, administrators, lawyers/- than that of a

6/ Arizona v. California, 373 U.S. 546, 597-598 (1963).

man of ordinary prudence, he is under a duty to exercise such skill as he has."^{7/}

A concomitant proposition - here most important - is that, The guardian is under a duty to the ward affirmatively "to take and keep control of the trust property."^{8/} He is, moreover, to the extent of his capacities, here professional, "...under a duty to the beneficiary to use reasonable care and skill to preserve the trust property."^{9/} It is instructive to turn to the timber blow-down Menominee Case in Wisconsin. There Congress in its consent that the National Government could be sued, declared, among other things:

"At the trial of said suit the court shall apply as respects the United States the same principles of law as would be applied to an ordinary fiduciary and shall settle and determine the rights thereon both legal and equitable of said Menominee Tribe against the United States notwithstanding lapse of time or statute of limitations."^{10/}

^{7/} American Law Institute, Restatement, Trusts, Section 174.

^{8/} Ibid., Section 175.

^{9/} Ibid., Section 176.

^{10/} The Menominee Tribe of Indians v. The United States, 101 Ct. Cls. 22, 23 (1944).

From the findings, conclusions and the judgment in the last cited decision it is evident that the broad precepts of the law reviewed above were applied against the United States of America.

In a companion case to that last cited, the court had this to say with respect to the performance of the trust responsibility owing by the United States to the Indians:

"We further think that the provision of Section 3 of the jurisdictional act concerning the principles applicable to an 'ordinary fiduciary' add little to the settled doctrine that the United States, as regards its dealings with the property of the Indians, is a trustee."^{11/}

Perhaps the most basic concept of the trust obligation owing by the National Government to the Pueblo Indians is that it must exercise the highest degree of fidelity to them. It has been declared in regard to the loyalty of the guardian to the ward that, "The trustee is under a duty to the beneficiary to administer the trust solely in the interest of the beneficiary."^{12/} Recently it has been

^{11/} The Menominee Tribe of Indians v. The United States, 101 Ct. Cls. 10, 19 (1944).

^{12/} American Law Institute, Trusts, Section 170.

authoritatively declared that the United States owed "the most exacting fiduciary standards" with respect to the Indians, even if it should prefer to pursue other interests.^{13/} Under no circumstances can the United States in furtherance of its other obligations, act in competition with the Indians or in derogation of their rights.^{14/}

One of the most difficult aspects of this review is the dual responsibility of the United States - (1) its trust responsibility to the Pueblo Indians including, but not limited to, the preservation and protection of their rights to the use of water; (2) the responsibilities in connection with, but not limited to, the development of projects for non-Indian purposes. The conflicts emerging from that dual responsibility will be discussed in some detail.

Gravest threat to the Pueblo Indians and the continuation of their ancient communities is lack of information as to the extent of their reasonable present and future

^{13/} Navajo Tribe of Indians v. United States, 364 F. 2d 320, 322 (Ct. Cls. 1966).

^{14/} American Law Institute, Trusts, Section 170, p. 431 et seq.

demands for water from the Rio Grande. In the absence of that information it is virtually impossible for the United States to fulfill its trust responsibility.

Locale of the Pueblos along the main stream of the Rio Grande demonstrates graphically the problems of the Trustee United States. These Pueblos are traversed by or border upon the Rio Grande: (1) San Juan; (2) Santa Clara; (3) San Ildefonso; (4) Cochito; (5) Santo Domingo; (6) San Felipe; (7) Sandia; and (8) Isleta. These Pueblos are intersected by or traversed by tributary streams. (1) Taos; (2) Picuris; (3) San Juan; (4) Santa Clara; (5) Tesuque; (6) Nambe; (7) Pojoaque; (8) San Ildefonso; (9) Cochiti; (10) Santo Domingo; (11) San Felipe; (12) Santa Ana; (13) Jemez; (14) Zia; (15) Acoma; (16) Laguna; and (17) Isleta.

* * * * *

The foregoing discussion by Mr. Veeder lays the first premise upon which the action of the trustee, United States, must be judged. The second premise is the legal basis by which that trust responsibility is guided in the protection of Indian water rights. It is that consideration to which we now turn.

15/ Note: There are several undesignated tributary streams traversing the Pueblos. Note also that some of the tributary streams have different names on different maps.

II. Winters Doctrine Rights to Use of Water.

When the tribes began to experience intrusions upon their lands and surrounding areas, they probably did not give thought to whether their right to the use of water was also being infringed upon. The Pueblo tribes in New Mexico had, like certain tribes in Arizona, developed irrigation systems along the Rio Grande and its tributaries and made use of those systems many centuries before the Conquistadores rode into their villages. To the tribes, the river was alive and part of the whole process of nature. Their relationship, in that process was one of worship, reverence, and respect for those elements which were provided to sustain life. There were no elaborate concepts of law which guided the tribes in their relationship to one another. Each tribe lived in its own locale, adjusting to the forces of nature as those forces changed from year to year.

The invasion of the Europeans into the home areas of the tribes brought irreversible changes, including definitions of rights based upon foreign concepts of law. As the Western territories were annexed to the

United States, the protection or lack of protection of the laws of the majority culture was imposed upon the tribes. The tribes in these Western territories began to experience settlement upon the lands by hunters, miners, farmers, cattlemen and businessmen. As a result of the settlements, the tribes could not roam and hunt at will upon the lands which they had known as their homes.

During the last half of the 19th Century the settlement of the West became so overpowering that the tribes were forced to reach agreements with the United States to make their homes upon defined, limited areas of land through treaties between the Tribes and the United States. These areas were and are known as reservations.

When the settlers established themselves in the Western territories, the availability and use of water for domestic use and economic growth became a matter of the highest priority. Without a sufficient supply of water, no community could establish itself and grow.

There being vast areas of arid and semi-arid lands in the Western United States, water was in much shorter supply than in the Eastern United States. As the settlement of the West expanded, the law relating to the use of water by non-Indian users grew out of the concept of prior beneficial use, now known as the doctrine of prior appropriation. The main feature of this doctrine is priority of right based upon actual use. It has been defined in these terms: "..... to appropriate water means to take and divert a specified quantity thereof and put it to beneficial use in accordance with the laws of the State where such water is found, and, by so doing, to acquire under such laws, a vested right to take and divert from the same source, and to use and consume the same quantity of water annually forever, subject only to the right of prior appropriations." (Arizona v California 283 U.S. 423 (1931)).

The fact that so many settlers were establishing homes and communities near the Indian reservations raised the issue of whether the lands of the tribes

were subject to the doctrine of prior appropriation. The issue was faced squarely and answered in Winters v U.S., 207 U.S. 564 (1908).

The Fort Belknap Indian Reservation in the State of Montana was set up by a treaty in 1888 whereby the tribes granted to the United States certain lands and reserved the lands upon which their reservation was established. The north boundary of the reservation was the center of the Milk River, a tributary of the Missouri River. In 1889 water was diverted from the Milk River to irrigate reservation lands. Subsequently, Winters and other non-Indian defendants built dams and diversions upstream from the reservation which prevented waters of the Milk River from reaching the Indian lands. The non-Indians claimed that they had properly appropriated the water. The Indians obtained an injunction against the non-Indians and on appeal to the Ninth Circuit the injunction was upheld. On appeal to the United States Supreme Court, two basic questions were to be resolved:

- 1) Were rights to the use of water in the Milk River reserved for the tribal lands, even though the water rights were not mentioned in the Treaties involved?
- 2) Assuming a reservation of those rights, were they divested when Montana was admitted to the Union?

In answer to the first question, the court stated:

The lands were arid, and, without irrigation, were practically valueless. And yet, it is contended, the means of irrigation were deliberately accepted by the government. The lands ceded were, it is true, also arid; and some argument may be urged, and is urged, that with their cession there was the cession of the waters, without which they would be valueless, and "civilized communities could not be established thereon." And this, it is further contended, the Indians knew, and yet made no reservation of the waters. We realize that there is a conflict of implications, but that which makes for the retention of the waters is of greater force than that which makes for their cession. (emphasis added)

Exhibit No. 17—Continued

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In response to the second question, the court said:

The power of the Government to reserve the waters and exempt them from appropriation under the state laws is not denied, and could not be. The United States v The Rio Grande Ditch and Irrigation Company, 174 U.S. 371. That the Government did reserve them we have decided, and for a use which would be necessarily continued through the years. This was done May 1, 1888, and it would be extreme to believe that within a year Congress destroyed the reservation and took from the Indians the consideration of their grant, leaving them a barren waste--took from them the means of continuing their old habits, yet did not leave them the power to change to new ones.16/

In summary, the Winters case makes clear:

- 1) By the Treaty of 1888, the Indians reserved to themselves the rights to the use of water in the Milk River; even though the Treaty made no mention of those water rights; and
- 2) The Indian water rights which were reserved under the Treaty were exempt from the laws of a state.

16/ Winters v U.S., 207 U.S. 577 (1908).

That same year the Ninth Circuit was faced with another case, very much like the Winters case, involving the Blackfeet tribe. In Conrad Inv. Co. v. U.S. 161 F. 829 (9th Cir. 1908), non-Indians had obstructed the flow of the Birch Creek which was to be used for the benefit of the Blackfeet Reservation.

Reviewing Winters, the Ninth Circuit concluded:

The present case is in many respects similar to the Winters Case. The act of Congress on May 1, 1888, which ratified an agreement with certain Indians and established the Ft. Belknap Indian reservation, with the middle of the main channel of Milk River for its northern boundary established also the Blackfeet Indian reservation, with the middle of the channel of Birch Creek for its southern and southeastern boundary, and in this case the diversion of the waters of Birch Creek by means of a dam is the subject of controversy, as the diversion of the waters of Milk River by means of a dam was the subject of controversy in the Winters Case. The law of that case is applicable to the present case, and determine the paramount right of the Indians of the Blackfeet Indian reservation to the use of the waters of Birch Creek to the extent reasonably necessary for the purpose of irrigation and stock raising and domestic and other useful purposes. The government has undertaken, by agreement with the Indians on these reservations to promote their improvement, comfort

and welfare, by aiding them to become more self-supporting as a peaceful and agricultural people. The lands within these reservations are dry and arid, and require the diversions of waters from the streams to make them productive and suitable for agricultural, stock raising, and domestic purposes. What amount of water will be required for these purposes may not be determined with absolute accuracy at this time; but the policy of the government to reserve whatever water of Birch Creek may be reasonably necessary, not only for present uses, but for future requirements, is clearly within the terms of the treaties as construed by the Supreme Court in the Winters Case.

(emphasis added) (at page 832)

In Arizona v. California, 373 U.S. 546 (1963), the Supreme Court reiterated the principle of the Conrad Investment case and relied upon the Winters case as a firm precedent for the proposition that Indian Reservations were established with the intent that the waters to be reserved should be enough to "make those reservations livable" (at p. 599). The Court sustained the Report of the Special Master and stated at page 600:

....we also agree with the Master's conclusion as to the quantity of water intended to be reserved. He found that the water was intended to satisfy the future as well as the present needs of the Indian Reservations and ruled that

enough water was reserved to irrigate all the practically irrigable acreage on the reservations.

The Court in Arizona specified one criteria of determining present and future needs - irrigable acres. This was, however, not set out as the exclusive measure of Indian water rights under the Winters 17/ Doctrine.

In summary, the Winters Doctrine Rights, as developed through the Winters, the Conrad Investment, and the Arizona cases, stands today as the definitive rule upon which protection of the water rights of the tribes is based. Winters has stated that the Indians could use the water "for agriculture and arts of civilization." Conrad Investment, relying on Winters had held that "..... whatever water may be reasonably necessary, not only for present uses, but for future requirements is clearly within the terms of the treaties as construed by the Supreme Court in the Winters case." And in Arizona, again relying on Winters, the Court stated that the amount of water reserved for Indian use must be sufficient to "satisfy the future as well as the present 17/ William Veeder, "Federal Encroachment on Indian Water Rights and the Impairment of Reservation Development," Joint Economic Committee, Washington, 1969.

needs of the reservations."

Based upon the statements in the foregoing discussion, the Winters Doctrine may be defined thus: Indian tribes residing on reservations have paramount rights to sufficient water with which to meet their present and future economic development requirements. Those rights are not subject to state laws and are paramount to water users who claim their rights under state laws.

It would seem that the United States, acting in its capacity as trustee to the property of the tribes, would find itself on firm ground when faced with the duty of protecting that property, including water rights. But the history of the West and the activities of the government in the development of that vast area raises many questions as to the conflicts of interest which exist within the structure of the trustee. The following section will make a general review of those events.

III. Chronicle of Projects Affecting Tribal Lands
and Water Rights.

The rush of settlers to the lands of the West forced Congress to consider legislation which would enable development of the Western United States. It was obvious to those who had traveled and studied the settlements in the grasslands, desert areas and mountain valleys that the primary need was an adequate supply of water.

Reacting to this pressure, Congress established a fund in the Treasury known as the "reclamation fund," to be used in the "examination and survey for, and the construction and maintenance of irrigation works for the storage, diversion, and development of waters for the reclamation of arid and semi-arid lands in the said States and Territories..." comprising the entire western ^{18/} United States.

This Act opened the door for a tremendous flurry of

^{18/} 32 Stat. 388, 43 U.S.C 391, 411ff

activity to develop reclamation works throughout the West. The Territory of New Mexico was a key area for projects to be developed. Since the Civil War, and particularly after the railroads came to New Mexico Territory in the 1880's, emigration from the East had greatly increased and began to strain the natural resources of the area. Seeing the opportunity to develop the southern farming areas of the Territory of New Mexico, enterprisers formed the Elephant Butte Company to build a dam and irrigation works in Elephant Butte Canyon, 100 miles north of El Paso on the Rio Grande. With the coming of Federal involvement in the field of "reclamation," the government took over the construction of Elephant Butte Reservoir, to impound the flood waters of the Rio Grande for purposes of irrigation.^{19/}

In the meantime, Mexico was feeling a noticeable decrease in the flow of the Rio Grande at El Paso.

^{19/} 33 Stat. 814 (1905)

This was due to the tremendous increase in irrigated lands in southern Colorado and New Mexico Territory, following settlement of those lands. Upon protest by Mexico, investigations transpired from an international committee. The result was a recommendation to build a dam at El Paso to regulate the flow of the river. Reclamation Service came up with the alternative plan of building a dam near the site selected by the old Elephant Butte Company, as mentioned above.

As development of reclamation projects in the West expanded, it became more obvious that the shortage of water was a serious problem for anyone who lived in the arid and semi-arid lands of the west. In a report by the United States Geological Survey in 1915, there appears this ominous conclusion based on the known facts: "The waters of the Rio Grande and its tributaries are already so fully utilized that any increase in development must come chiefly through storage ^{20/} of flood waters.

^{20/} "Water Resources of the Rio Grande Basin, 1888-1913," U.S. Geological Survey, Washington, Gov't. Printing Office, 1915.

Shortly afterwards, the United States Reclamation Service pursued studies to determine what projects could be instigated in the Middle Rio Grande Basin to improve the water usage system there.^{21/}

During this same decade, the status of certain Indian lands was being seriously questioned due to a Supreme Court decision, U.S. v Sandoval, 231 U.S. 28 (1913). That decision recognized the guardian-ward relationship between the U. S. and the Pueblo tribes and placed the title to certain lands which had been purchased from the Pueblo tribes, or otherwise entered and settled upon during the preceding half century, in doubt. For many years prior to the Sandoval decision non-Indians had settled upon lands within the Indian reservations. These settlements were, in some cases, through purchase agreements with the tribes, while in other cases the settlements were made without agreement or approval by the tribes. When the Sandoval decision came down, and it was clear that a non-Indian could not

^{21/} "Report on Water Supply and Possible Development of Irrigation and Drainage Projects on the Rio Grande Above El Paso, Texas," U.S. Reclamation Service, June, 1919.

settle upon Indian reservation land without approval from the trustee of those lands, the United States, much uncertainty arose as to the validity of the non-Indian settlements on Indian lands. Reacting to the uncertainty raised by the Sandoval decision, Congress established the Pueblo Lands Board to investigate land titles within Pueblo Land Grants Board to investigate land titles within Pueblo Land Grants and set up machinery to quiet title to the Pueblo tribal lands. ^{22/} The Board was supposed to hear evidence from adverse claimants and make reports on each individual Indian Pueblo, which reports were to be given to the United States Attorney General so that the United States "in its sovereign capacity as guardian of said Pueblo Indians," could file a quiet title suit for the Indian lands. As a part of the investigation, the Board was to make some determination of the water rights of the parcels

^{22/} 43 Stat. 636 (1924)

of land involved. By 1933, the Board had concluded its investigation and made findings which determined who had title to the lands in dispute. As a result of these determinations, some Indians and some non-Indians had to move from the lands in question. These parties were compensated for their "loss" and Congress appropriated funds for this purpose.^{23/}

The reports from the Board were not consistent in the amounts of water rights granted to the parcels of land involved. In some instances there are no specific amounts allocated and in other instances certain parcels of land are entirely overlooked. Thus, the matter of Pueblo tribal water rights was made more confused.

While the United States was determining who owned what lands and what water rights in the Pueblo Lands Boards actions, the work of reclaiming arid lands and

^{23/} 48 Stat. 109.

developing flood control and irrigation works proceeded at a rapid pace. Throughout the West, conservancy districts were being formed under the State laws, designed to increase irrigation and control of the flow and quality of the waters from stream within state boundaries. In New Mexico, the Middle Rio Grande Conservancy District was created in 1925, as a political subdivision of the State of New Mexico, to plan, construct and operate a coordinated, modern irrigation and flood control project. Within the exterior boundaries of the District were included six Pueblo tribes. Subsequently, Congress authorized the Secretary of Interior to execute an agreement... with the Middle Rio Grande Conservance District ... providing for conservation, irrigation, drainage, and flood control for the Pueblo Indian lands situated within the exterior boundaries of the said Middle Rio Grande Conservancy District... ^{24/}

The Agreement, entered into on December 14, 1928,

^{24/} 45 Stat. 312 (1928)

provided for, in part, construction of "necessary works ...that will result in material, permanent and beneficial improvements and actually divert and carry the water to the acreage of Indian lands of the several Pueblos approximating 23,607 acres and especially so that the new system will carry and deliver to all areas of Indian lands now irrigated and adequate water supply without cost to the Indians other than as herein provided."

The "several Pueblos" referred to were: Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia, and Isleta.

Of particular importance to the tribes was the manner in which their water rights were recognized by the Agreement.

Clause Number 20 of the Agreement states:

...The cultivated area of the Pueblo Indian lands approximating 8,346 acres, has water rights for such area that are not subject to the laws of the state of New Mexico, and are prior and paramount to any rights of the District or any property holder therein, such water rights being for irrigation, domestic and stock purposes. The said

District hereby recognizes these water rights now appurtenant to the said area of irrigated Pueblo Indian lands owned individually or as pueblos, and for domestic and stock purposes of the Indians as prior and paramount to any rights of the District or of any property holder therein; that in regard to the newly reclaimed Pueblo Indian lands the said District hereby agrees, recognizes and grants a proper share of water sufficient to adequately and properly irrigate the newly reclaimed Pueblo Indian lands, as for like District lands, and further agrees that the District shall not discriminate in the division and use of water for such newly reclaimed Pueblo Indian lands, and that such water rights for the newly reclaimed lands, as well as for the now irrigated Pueblo lands, are not and shall not be subject to any laws relating to loss by reason of non-use or abandonment thereof so long as title to said lands shall remain in the Indians individually or as Pueblos or in the United States. (emphasis added)

The "newly reclaimed" lands to which the agreement refers were lands that heretofore had not been cultivated on the Pueblo reservations. The agreement created two categories of lands within the reservations--cultivated lands and newly reclaimed lands. The cultivated lands were recognized for their prior and paramount rights to water. In contrast, the newly reclaimed lands approxi-

mating 15,261 other acres were treated differently. Even though they were Indian reservation lands, bearing Winters Doctrine Rights identical to those of the old cultivated lands, such lands were only recognized and "granted" a share of water on the same basis as the non-Indian lands within the Middle Rio Grande Conservancy District. By not recognizing that the 15,261 acres of newly reclaimed lands had prior and paramount rights the same as the 8,346 acres of old cultivated lands, the Agreement resulted in a gross derogation of Indian rights.

The interest of the Pueblo tribes in the Rio Grande Compact, which was to come in the next year, was obvious. As parties to the Middle Rio Grande Conservancy District, they were directly affected by the Rio Grande Compact controversies, studies, compromises and finally, the approval of the Compact by Congress in 1939. ^{25/}

As the Rio Grande Compact was being worked out,

^{25/} 53 Stat. 785.

massive studies were being conducted on the major river systems of the West, including the Colorado River and the Rio Grande. In 1937, a report of the National Resources Committee revealed detailed studies of possible water usages and division pertaining to both the Colorado River Basin, transporting water from the San Juan River across the continental divide to the Chama River on the Rio Grande Basin. The full report detailed a large number of supplemental projects to develop the Middle Rio Grande basin.^{26/}

The plans for the Middle Rio Grande Basin were by no means isolated operations in the whole scheme of the Department of Interior's Southwest operations. A larger river system than the Rio Grande, the Colorado River was also being recognized for its importance in future development of the Southwestern region. In 1921, the seven states directly affected by the Colorado

^{26/} "Part VI - Rio Grande Joint Investigation on the Upper Rio Grande Basin," National Resources Committee, Government Printing Office, 1938.

River, Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, gained the approval of Congress to enter into a compact providing for "an equitable division and apportionment among said states of the water supply of the Colorado River and of the streams tributary thereto..."^{27/} A year later, the seven states signed a compact which stated among its major purposes, "to establish the relative importance of different beneficial uses of water, and secure the expeditious agricultural and industrial development of the Colorado River Basin."^{28/} Article VII of the Colorado River Compact states that "Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes."^{29/}

^{27/} 42 Stat. 171.

^{28/} 70 Cong. Rec. 324 (1928)

^{29/} Ibid. p. 325.

In 1928, approval of the Colorado River Compact was given by Congress, stating that all users and appropriators of the water in the Colorado River would be subject to and controlled by the Compact.^{30/} The 1928 Act not only approved the Compact, but gave the green light to the burgeoning water policies of the Secretary of Interior by authorizing the Boulder Canyon Project in Arizona. This project was to be a key event in dividing the water on the main stream of the Colorado River between the Upper and Lower River Basins. Supposedly, it protected the Upper Basin against unlimited development beyond the allocated water for the State of California. The States of California and Arizona and Nevada subsequently were unable to agree on a division of the Lower Basin water, which eventually led to the suit filed by Arizona against California in 1952 (See Appendix B map.)

In 1929, Congress consented to compacts or agreements between the States of Colorado and New Mexico respecting

^{30/} 45 Stat. 1057, 1062, 43 USC 617.

division and apportionment of the waters of the Rio Grande, San Juan and Las Animas Rivers, and compacts among New Mexico, Texas and Oklahoma respecting the Rio Grande, Pecos and Red Rivers. ^{31/} All meetings, consultations and discussions pursuant to these compacts would include a representative of the Department of the Interior, trustee to the tribal interests.

By February, 1929, New Mexico, Colorado, and Texas had entered into a temporary Compact, providing that a condition of "status quo" should be maintained on the Rio Grande and that a permanent Compact would be concluded by June 1, 1935. As in the Colorado River Compact, this temporary agreement stated that nothing in the compact should be construed as "affecting the obligations of the United States of America to the United States of Mexico, or to the Indian tribes, or as impairing the rights of the Indian tribes." ^{32/}

^{31/} 45 Stat. 1502.

^{32/} 46 Stat. 767, 772.

During this same period, much controversy arose among the states, particularly between New Mexico and Texas, concerning the use of the water of the Rio Grande in the Middle Rio Grande area. Unable to reach agreement with the State of New Mexico, and particularly the Middle Rio Grande Conservancy District, the State of Texas filed suit to enjoin the program of the Middle Rio Grande Conservancy District. This led to a compromise and subsequent completion of the Rio Grande Compact, signed on March 18, 1938, ratified by the States of Colorado, New Mexico and Texas and consented to by Congress in 1939.^{33/} The compromise only lasted until after World War II when Texas filed suit alleging depletion of water by the Middle Rio Grande Conservancy District use.

World events which followed postponed plans for reclamation projects suggested in the thirties, but plans for the post-war period were being made. In 1944, the

^{33/} 53 Stat. 785.

Bureau of Reclamation, along with the State of Arizona, began investigations for water utilization in central Arizona. That same year, in a Treaty between the United States of America and the United Mexican States, the Mexican government was guaranteed the right to receive a specified amount of water annually from the Rio Grande and Colorado Rivers.^{34/} This Treaty has had to be considered in each subsequent plan to use water from the two rivers.

Another significant wartime event relating to the use of Southwestern Water was the authorization by Congress to place navigation and flood control projects under the Chief of Engineers, War Department, now known as the Corp of Engineers.^{35/}

^{34/} 59 Stat. 1219 (1945).

^{35/} 58 Stat. 887 (1944) 33 U.S. C. 701a.

Until this time, flood control projects were under the Bureau of Reclamation. This Act also set the stage for vigorous postwar prosecution of projects in the planning stage. The authority of the Chief of Engineers was later extended to construct and operate public park and recreational areas in reservoir projects under the War Department.^{36/}

An investigation made by the Bureau of Reclamation which began in 1944 produced an extensive scheme known as the Central Arizona Project (CAP).^{37/} The plan was described as follows:

...Operation of the project would include introduction of the Colorado River water to the Salt River area, the diversion of water from the Salt River area to the middle Gila River area, and the regulation and conservation of water in the middle and upper Gila River areas and along the San Pedro River to allow for increased diversions.

About the same time that the Central Arizona Project Plan was revealed, interested government agencies released

^{36/} 60 Stat. 641, 33 U.S.C 701 A ff.

^{37/} U.S. Dept of Interior, Report on Feasibility, Bridge Canyon Route, Central Arizona Project, Project Planning Report No. 3-8b.4-1, February, 1947.

Comprehensive plans for Water Resources Development in the Rio Grande and Colorado River Basin. These plans completed the work started fifteen years earlier and projected future developments,^{38/} which were approved, as in accord with an agreement between the Secretary of Army and Secretary of Interior, by Congress in the Flood Control Act of 1948.^{39/}

In the Rio Grande Basin, the Middle Rio Grande Project for flood control was authorized by the 1948 Act. Among the components of the project were (1) a channel and flood way program, (2) Chamita Reservoir, (3) a flood control and sediment reservoir on the Jemez River (located within the boundaries of Santa Ana Pueblo), and (4) plans to purchase the El Vado Dam and Reservoir. The latter was done pursuant to an agreement between the United States and the Middle Rio Grande Conservancy District that the United States would construct the Middle Rio Grande Project, including work

^{38/} Comprehensive Plan for Water Resources Development, Rio Grande Basin, Report by the Dept. of Interior Project Planning Report No. 5-15.0-1, May, 1946.

^{39/} 62 Stat. 1171 (1948).

on the El Vado Dam, and operate and maintain the District works during construction. Thereafter, the United States would appoint the District as its agent for operation and maintenance. All of this, of course, directly affected the six Pueblo tribes involved in the Middle Rio Grande Conservancy District.

Following this massive legislative effort, implementation of the projects proceeded pursuant to subsequent Congressional acts over the next quarter of a century. Among the most significant developments to occur were the following:

Colorado River Storage Project - Consists of twenty-four participating projects, including the San Juan-Chama Project, designed to supply the Middle Rio Grande Basin municipal and agricultural interests.^{40/} The construction of this particular project was authorized by Congress in 1962.^{41/} This authorization

^{40/} 70 Stat. 105 (1956)

^{41/} 76 Stat. 102 (1962) (San Juan Chama) 43 U.S.C 620a.

to build the transmountain diversion system effectuates a method of diverting water from the Colorado River system to the Rio Grande.

The San Juan-Chama Project directly limits the flow of water downstream on the San Juan River, affecting the Jicarilla Apache Tribe, and the Navajo Tribe because it diverts water from the San Juan River into the Rio Grande Water System in new Mexico. (See Appendix B.) It also directly affects the tribes on the Rio Grande because it introduces foreign water into that river system causing difficulties in determining water users rights in that stream system.

Cochiti Legislation^{42/} - The Cochiti Reservoir, was to be constructed on the Rio Grande, at the Cochiti Reservation, for "flood control." However, a special provision in the Act anticipated the upcoming San Juan-Chama diversion project, with importation of that water to be used, in part, to supply water for recreation pools in the flood control projects. Note Section e: "Provided that the water required to fill and maintain such pools is obtained from sources entirely outside the drainage basin of the Rio Grande."
^{42/} 74 Stat. 480 (1960) Cochiti.

Federal Water Project Recreation Act of 1965^{43/} - This legislation encouraged the development of recreation areas at or around the reservoirs constructed pursuant to other purposes. In effect, it opens the door to land development schemes connected with the new recreation areas. This directly affects Indian lands because numerous reservoirs have been constructed adjacent to or located on Indian reservations. In New Mexico, Cochiti Dam, Jemez Dam (on the Santa Ana reservation), Navajo Dam, in Northwestern New Mexico (near the Navajo reservation) are examples.

Colorado River Basin Project^{44/} - This set in motion much of the Pacific Southwest Water Plan proposals which had been packaged in 1964. Included in this legislation was the huge Central Arizona Project (CAP). The CAP, with its extensive diversions, would affect the flow of the Colorado River downstream from the diversions. Among the tribes affected are Ft. Mohave

^{43/} 79 Stat. 213 (1965)

^{44/} 82 Stat. 885 (1968) (CAP Act) 43 U.S.C. 1501

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Tribe, Colorado River Tribes, Ft. Yuma Tribe, Chemehuevi
Tribe, and the Cocopah Tribe.

IV. The Performance of the Trustee, United States, in the Protection of Tribal Lands and Water Rights.

The Act of June 17, 1902, setting up the reclamation bureau within the Department of Interior, marked the beginning of a series of events which would invade and conflict with the interests of the Indian tribes all over the United States. The first reclamation project in New Mexico, the Rio Grande Project, itself defined the basic conflict involved with every subsequent reclamation project - providing water for the incoming developers who anticipated the growth of the area through emigration, as opposed to protecting those prior and paramount rights which had been established before New Mexico was a part of the United States. Those prior rights which were unquestionably established are those of the Indian tribes.

By the time the Winters case set the foundation for the protection of Indian water rights, there was already widespread recognition that not enough water in the Rio Grande Basin existed to satisfy all those who wanted to use it. Yet the only attempt made to protect the tribes' Winters Doctrine Rights was a document filed by the

Indian Service in 1911 entitled "Declaration of Water Rights" on behalf of seventeen of the eighteen Pueblo tribes in New Mexico. The report listed 19,014 acres for which water rights were claimed. Taos Pueblo was not included.^{45/}

While plans were being made to develop the Middle Rio Grande Valley and increase the population and use of the land through agriculture, there did not appear any definitive effort to classify and inventory the land and water needs of the tribes. Rather, the Trustee, United States, proceeded to make a haphazard effort to quiet title to Indian and non-Indian lands and water rights through the Pueblo Lands Board, leaving a confused situation for the tribes.

The agreement to include Pueblo tribes of the Middle Rio Grande Valley in the Middle Rio Grande Conservancy District served only to limit the water rights of the tribes involved. In the agreement an estimated 23,607 acres of Pueblo Indian lands was cited as being irrigable and embraced within the district lands. Of these Indian

^{45/} Report of Special Master, Texas v. New Mexico, Supreme Court of the U.S., October term, 1953, p. 31.

lands 8,346 acres were stated to be cultivated at that time (1928) and were recognized to have prior and paramount rights to the use of water above all other lands in the District. But the remaining 15,261 so-called newly reclaimed acres, even though Indian lands entitled to Winters Doctrine Rights identical to those of the 8,346 acres, were treated the same as the non-Indian District lands.

By not giving the lands their proper recognition and assuring their Winters Doctrine Rights in the agreement, the Trustee for the tribes contracted away a significant part of the tribes water rights respecting these approximated 15,261 acres.

Continuing the gross violation of its trust responsibility, the United States participated in the negotiations which culminated in the Colorado River and Rio Grande Compacts without taking active measures to protect the rights of the tribes involved other than a statement that "nothing in this compact shall be construed as affecting the obligations of the United States to Indian tribes."

It is not contended that the United States has violated its trust responsibility by building projects

or approving water control agreements per se. It is recognized that a reclamation or flood control project could conceivably be of great benefit to the Indian tribes. The point is that while the United States uttered statements indicating that it was under obligation to the tribes, it took no active measures to assure that the water rights of the Indian tribes were, in fact, being protected.

In the face of continued evidence of the limited supply of water in the Rio Grande and Colorado River the Trustee continued its policy of "looking the other way." When Colorado, New Mexico and Texas agreed in the Rio Grande Compact to allocate the waters of the Rio Grande to their respective states it appeared that the water supply for the Indian tribes might be limited by that Compact. The Trustee acknowledged the danger while making no demand that the Indian rights be protected. Observe this statement by the U.S. Indian Service District Counsel in a memorandum to the Director of Irrigation of the Indian Service in 1939:

The only reason we are concerned about whether The Compact may work to the disadvantage of New Mexico is that we believe that the Indian interests must be satisfied, if they are to be satisfied at all, out of the allocation to New Mexico, and if New Mexico should later find that it had made a mistake and will not get the water which it thought it would get we are of the opinion that the Indians will be the ones to feel the blow first if the Compact is ratified unconditionally by Congress. (emphasis added)

In the same memorandum, it was recommended that the "newly reclaimed lands" of the Pueblo tribes in the Middle Rio Grande Conservancy District maintain their status of being recognized on the same basis as non-Indian lands.

As seen in the historical survey of this paper, by the time World War II interrupted domestic schemes in this country, elaborate plans to manipulate the short water supply in the West had already been drawn up. After the tide of the war turned in favor of the Allies, the drawing boards were once again busied, refining the plans spelled out in the 1930's.

While the Department of Interior was implementing the 1948 legislation, visitors to the desert states

could see definite population patterns taking shape. In the Upper Colorado River area Denver was obviously the star of the Rocky Mountain states. Huge mineral discoveries in the San Juan area promised a growth in the settlement of the Four Corners area. In the lower Colorado River Basin, prospects of massive land development in southern California and southern Arizona were bound to make huge demands upon the river system.

On the east side of the Continental Divide, the Middle Rio Grande Valley was one logical recipient of post-war emigrants. Albuquerque, located at a strategic crossroads, had already tripled its population since 1940. Easy access to that city and the beautiful climate were natural advertisement for speculators. In the lower Rio Grande Valley, the El Paso area became a local point of military activity, including the White Sands Military Reservation just to the north.

By 1960, the dreams of those who foresaw and planned for the growth in these areas were well on their way to fulfillment. As predicted, the major growth areas mentioned had doubled their populations.

Of primary concern in this paper is the question: What was being done to protect the prior and paramount water interests of the tribes. As noted above, prior to the war, the Trustee, United States, had overseen a fragmented, confused policy that has, in at least one instance, resulted in an outright give-away of a significant part of the Indian water rights of the six Middle Rio Grande Pueblos through the Middle Rio Grande Conservancy District agreement.

The United States had pursued rapid expansion of the reclamation projects, serving the interests of those who could foresee the expansion of the West and the rewards for those who had water available.

That this would also be the policy in the post-war period appears clearly from the reports justifying the legislation in the period after 1946. Witness to this statement is a report of the President's Water Resources Policy Commission in 1950.^{46/} The report

^{46/} "River Program Policy Considerations -- The Rio Grande", The Committee on River Program Analysis No. II, The President's Water Resources Policy Commission, October 10, 1950.

is quite candid in its discussion of the desires of the non-Indian interests in the Rio Grande Valley.

At page 5, note this statement:

Scarcity of water is a limiting factor for any kind of economic expansion in this area. The flow of the Rio Grande and its tributaries and known ground water supplies are fully appropriated and no water is available to allow for expansion of irrigation nor for substantial increase in municipal or industrial use. Growing municipalities can obtain sufficient water only at the expense of the nearby irrigated areas on whose continued existence the economic welfare of many of the urban centers now depends. (emphasis added)

Again, to emphasize the shortage, on page 18:

All presently developed water has been appropriated and, in some cases, over-appropriated, and water use for any purpose can be expanded only at the expense of some other beneficial use.

This is a theme which, we noted, was first expressed in 1915. It was obvious that, in order for the area to grow in population and expand in all economic areas, water was the basic need. But, if there was not enough water for everyone to prosper, someone would lose. We should remember, as noted earlier in this paper, the

Indian tribes had and still do possess prior and paramount rights to the use of water. Did it follow, then, that their rights would be protected in spite of the force of growth from the non-Indian interest? The answer is no.

The most crucial witness to this is found in the litigation Texas v. New Mexico instituted in 1952. Texas, feeling a loss of water in the Rio Grande, sued New Mexico to limit the use by New Mexico of Rio Grande water. This related particularly to the Middle Rio Grande Conservancy District. Texas argued that the United States was an indispensable party since it was charged with protecting private Indian rights and public property rights in the National lands in New Mexico. If the United States had entered the case, it would have had to protect Indian rights to water. The case was finally dismissed because the United States, Trustee for the Indian tribes, would not allow itself to be a party to the suit.^{47/} It was obvious that if Winters Doctrine Rights of the Indian tribes were enforced in New Mexico, there would not be enough water left for the development of large non-Indian interests.

^{47/} 352 U.S. 991(1957).

A recent event which affects the New Mexico and Arizona tribes was the passage of legislation in 1962, which gave birth to an idea spawned thirty years earlier.^{48/} The San Juan-Chama Reclamation Project culminated at least thirty years of planning.

This ambitious project, referred to several times in this paper, will be used to help non-Indian interests in total disregard of the prior and paramount rights of the Indian tribes on both the Colorado River and Rio Grande systems. The implication of this legislation will be examined next.

1) The legislative history of the Act explains that the San Juan-Chama diversion would enable New Mexico to use a major portion of the waters of the Upper Colorado Basin to which it is "entitled" under the Colorado River and Upper Colorado River Basin Compacts.^{49/} The plan is for the imported water from the San Juan river to be used to provide 110,000 acre feet extra to be used in the following manner:^{50/}

^{48/} 76 Stat. 102, 43 U.S.C. 620a.

^{49/} U.S. Code, Congressional and Administrative News, 87th Congress, 2nd Session, pp. 1681-1701.

^{50/} "Inventory of Potential Users of Unallocated Water", San Juan-Chama Project, Bureau of Reclamation, Nov. 1968.

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- 27,700 acre feet annually to replace depletion of the Rio Grande water supply caused by the Pojoaque, Llano, Taos and Cerro tributary units.
- 20,900 acre feet annually to be used in the Middle Rio Grande Conservancy District.
- 5,000 acre feet annually to the Cochiti Reservoir.
- 48,200 acre feet annually to the City of Albuquerque.
- 8,400 acre feet will evaporate in the reservoirs.

The Legislative History also states that "recreation and preservation and propagation of fish and wild-life" are other purposes of the project.

In a discussion of the need for this project, the Legislative History expounds on a theme we have seen reiterated time and again since the beginning of this century - shortage of water. This time the statement is stronger than ever. Note the following excerpt:

The water needs of the Rio Grande Basin far exceed the amounts of water available, either in the basin or for diversion from the San Juan Basin... The economic plight of the small communities in tributary streams (includes Pueblo tribes) in the northern part of the Rio Grande Basin has long been recognized as a major problem of the State... Farther south along the Rio Grande the available water supply is over-committed and there is a critical need for supplemental water in order to stabilize the agricultural economy... The need for municipal and industrial water...is even more critical than the need for irrigation water. Albuquerque is one of the fastest growing cities in the United States... An assured water supply is essential...for the anticipated growth of Albuquerque.

In spite of conflicting testimony as to the availability of water in the Colorado River, the Committee's majority report ^{51/} concluded that there was enough water available from the Colorado River to fulfill the San Juan-Chama ^{52/} Project and the Navajo irrigation Project.

^{51/} U.S. Code, op. cit., p. 1688.

^{52/} The Navajo Irrigation Project, a companion project, anticipates a large diversion from the San Juan system to meet demands of the Four Corners Area. While the primary purpose of the Navajo Project is irrigation, the report notes: "The project is adapted to serve municipal and industrial water users as well as...irrigation. The officials of the State of New Mexico anticipate a relatively large municipal and industrial water demand will develop in the San Juan River Basin."

The San Juan-Chama project, if allowed to be implemented, would direct from the San Juan basin a large amount of water which would be necessary for the future development of the Jicarilla Apache and the Navajo tribal lands and economy. The tribes on the lower Colorado River are also interested parties since the waters diverted from the San Juan Basin would affect the downstream water flow and threaten their supply.

If the water diverted from the San Juan basin is introduced into the Rio Grande, the Pueblo tribes face more extreme problems of claiming enough water for their present and future needs. Without there being a determination of their rights to the use of water before implementation of such projects as the San Juan-Chama future attempts to claim water over and above their present uses would face obstacles which could be impossible to overcome.

We must also remember that at the time this Act was passed, Arizona v. California^{53/} had not been decided. The Arizona case was to make significant decisions about allocations under the Colorado River Compacts. Thus, major policy decisions about the use of the water were being made while litigation to determine the rights of water

^{53/} 373 U.S. 546 (1963).

users was still in progress. In addition, a definite determination of water needs of Indian tribal lands had never been made and no plans to do so were in the offing. The picture has become more incredible in regard to the Trustee's lack of action in the fact of impending plans and projects that directly affect the ability of the tribes to lay claim to their rights under the Winters Doctrine.

2) The incredulous nature of this inaction is well demonstrated by the posture which the Trustee has taken for the tribes in recent litigation involving the Pueblo Tribes.

In 1966, the State of New Mexico instituted one of five suits in the United States District Court of New Mexico, against the United States, four Pueblo Tribes and hundreds more, for determination of the water rights of the defendants in the "Nambe-Pojoaque River System," a tributary of the Rio Grande. This was one of five similar suits filed. The purpose of the suit was to facilitate the administration of the San Juan-Chama reclamation project which was under construction at the time this suit was instituted. The New Mexico complaint alleged that the users of the water in the "Nambe-Pojoaque River System," including the Pueblo tribes, used the water under New Mexico appropriation law. The State Engineer, it was alleged, made hydrographic surveys of the stream. The complaint asked that the court define and determine the water rights of each of the defendants.

The United States filed a motion to dismiss the action for lack of jurisdiction and then entered a motion to intervene in the suits. In the complaint to intervene the United States claimed immemorial rights to the use of water for the Pueblo Tribes and

that the tribes were entitled to use enough water to "satisfy the maximum needs and purposes of said Pueblos."

But in a Pre-trial Memorandum, the United States claimed, as an alternative theory, rights for the Pueblo tribes under historically irrigated lands based on appropriation and beneficial use. This alternative theory would place the water rights of the Pueblo Tribes on the same basis as the water rights of the non-Indian users of the Nambe-Pojoaque River and the tribes would have no water rights which would allow them claims for future use. If this alternative theory were allowed to be the basis for the Pueblo Indian water claims then there would be no way that the Indian tribes could grow as viable communities.

We have seen, in an earlier section of this paper, that Indian rights to the use of water have been protected and recognized through the development of the Winters Doctrine, on the basis of present and future needs. When the trustee is charged with protecting the

interest of the beneficiary, the Trustee should be a relentless advocate for the protection of the rights of the beneficiary.

The fact that the Trustee, United States, would even allow consideration of historically irrigated acres based on appropriation use as a theory to protect the rights of the Pueblo Tribes is an indication that the Trustee, United States, is not executing its full and unqualified effort to protect Pueblo tribal interests.

As a result of the filing by the United States of the Motion to Intervene, the parties were "realigned" to place the United States and the four Pueblo tribes as plaintiffs. The original suit thus proceeded on the basis of two separate complaints which seem unrelated.

In conjunction with the New Mexico complaint the State Engineer prepared a survey showing all irrigated lands within the Nambe-Pojoaque watershed. On the basis of the survey the State proceeded to make "Offers of Judgment" to hundreds of non-Indian defendants. If the

Offers were accepted by the defendants, agreements were signed and an Order issued by the U.S. District Court granting water rights to the parcels of land involved.

While these Offers of Judgment were being made, the United States did not ask that the non-Indian defendants prove their land title and rights to use of water. Even though the non-Indians may have had those rights, the failure of the United States, as Trustee, to examine the non-Indian defendants may mean an abandonment of Indian rights.

Several months later two Pueblo Tribes, downstream from the four tribes abovementioned, filed a Petition to Intervene in the five suits already instituted on the grounds that their rights were not being protected by the United States in regard to the Initial suits, since those suits affected waters from the upstream tributaries that fed the mainstream of the Rio Grande which, in turn, traversed their lands.

The United States responded that the two downstream tribes have no valid interest in the suits. Since that time, in 1970, the United States has continued to oppose the intervention of the two tribes.

In the light of the legal actions taken by all parties involved, we must step back and remember the interests of the parties involved.

The State of New Mexico. Has significant responsibility, as agent for the United States, in accounting for the water flows of the San Juan-Chama project and the delivery of water from that project to the recipients as listed above.

The Non-Indian defendants. Owners of land in the river areas who took title to land and water through transfers both under the Pueblo Land Board action of the 1920's and otherwise.

The Pueblo Tribes involved. All of these tribes, whether named or not named in the lawsuit, have Winters Doctrine Rights which must be protected by the Trustee, United States.

The United States. As a named party, the United States has interest in National Park lands to protect. These parks are in the same watershed areas as the tribal lands, thus placing the United States in a position of representing interests which are adverse to the tribal interests. Thus, the Trustee, United States, is again faced with a conflict of interest, between protecting its own public interests and protecting private rights of the tribes, here competing for the same water.

We must again note that in spite of assurances from the Bureau of Indian Affairs,^{54/} a serious, comprehensive study and determination of the land and water needs of the Pueblo Tribes has not been made.

The United States, as Trustee for the Indian tribes, is under a duty of assert and protect the land and water rights of the tribes. Water is the basic, most important resource for survival and growth

^{54/} Remarks by Commissioner Bruce, February 21, 1970, at Santo Domingo Pueblo, New Mexico.

in the arid and semi-arid lands in the West. It follows that if the Indian tribes are to survive and grow then the United States should exert its full effort to protect the land and water rights of the tribes.

The United States Government has made many pious utterances about the protection of tribal land and water interests. Yet, through the years, Indian tribes have witnessed a steady deterioration of their land and water resources, both in quantity and in quality. They have seen the United States Government give its overt approval to assure the success of special interest groups which are taking away the very resources upon which the existence of the tribes depends. In spite of numerous statements and admissions through the years to the effect that future growth by non-Indian interests could be accomplished only by bypassing the protection of Indian water rights, the United States refrained from giving that protection.

While recognizing on the one hand that the Indian tribes were wards of the government and that their land

and water rights were to be protected, the Government developed huge schemes to develop resources and use water for large non-Indian schemes to develop resources and use water for large non-Indian schemes, without first making a comprehensive, meaningful determination of the extent of the tribal land and water rights. Without this determination, there can be no real protection and guarantee of the land and water rights of the tribes.

And until the Government can give its unqualified commitment to the protection of Indian rights then the tribes can only expect that their cultures will be completely destroyed.

CONCLUSIONS

1. The Trustee, United States, has breached its trust responsibility to all Indian tribes, including the tribes of New Mexico and Arizona, and will continue to breach that duty until the United States government is honest enough to change its policy.
2. The Trustee, United States, through its principal agents, Department of Interior and Department of Justice, is caught in a deplorable conflict of interest. The Department of Interior, on the one hand, is charged with responsibility of fulfilling the trust duty to Indian tribes, through the Bureau of Indian Affairs, while on the other hand, it promulgates Bureau of Reclamation projects designed to develop non-Indian interests which invade Indian water interest.

The Department of Justice, is also caught in a conflict of interest. While charged with advocating Indian interests on the one hand, it is often found advocating non-Indian, competing interests in

the same suit. As President Nixon stated, "No self-respecting law firm would ever allow itself to represent two opposing clients in one dispute."

3. As a result of this immoral state of affairs, the basic civil right is being grossly violated - Indian tribes are being denied an economical base upon which to build their lives. Without protection of their Winters Doctrine Rights, there is no base upon which they can develop a viable, continuing experience. It is, as one honest human being put it, "the denial of the right to remain Indian."



Map of The
COLORADO RIVER BASIN
ARIZONA V. CALIFORNIA [373 US 602]

AND INDIAN RESERVATIONS ON THE MAIN STEM
OF THE COLORADO RIVER, THE GREEN RIVER AND
THE SAN JUAN RIVER AND THEIR TRIBUTARIES.

BUREAU OF INDIAN AFFAIRS
 PHOENIX AREA OFFICE
 JULY 26 MAR. 14, 1971

PLATE I

Exhibit No. 17—Continued

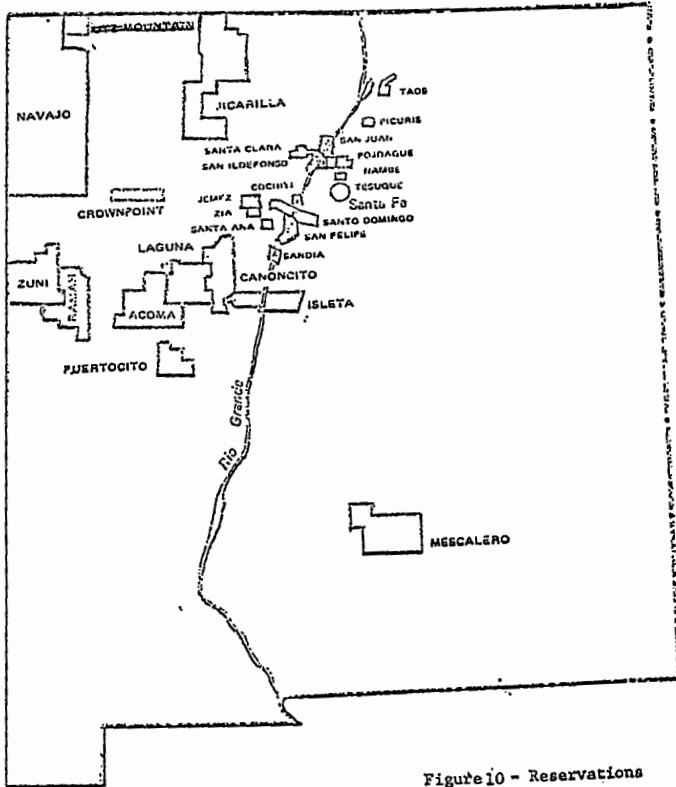


Figure 10 - Reservations
in New Mexico

Exhibit No. 17—Continued

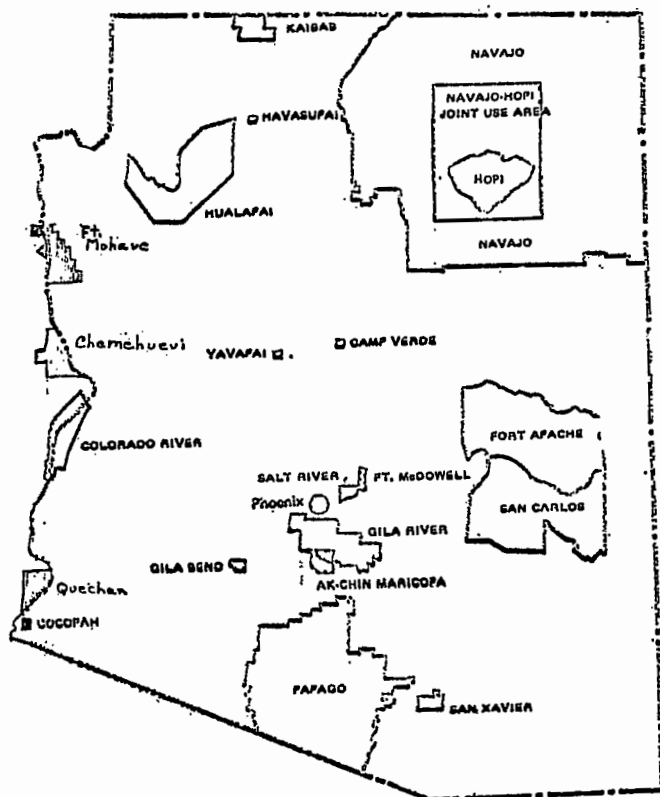


Figure 11- Reservations
in Arizona

*Exhibit No. 18*STATEMENTS TO COMMISSION ON INDIAN CIVIL
RIGHTS HEARINGS AT THE NEW CONVENTION
CENTER, ALBUQUERQUE, N. MEX. NOV. 14 - 15

To those of you who are not too well informed and familiar with Acoma, its existence, its diminishing resources, its problems and its struggle for survival, I wish to take this opportunity to summarize briefly each problem of major concern to my people.

The Pueblo of Acoma is divided into two sections, the reservation to the south, and the Pueblo grant to the north. The grant is the original land granted by the King of Spain to the Pueblo on September 20, 1689, while the reservation is land that was deeded to the Pueblo as reservation lands after the U.S. Government approved the original grant in 1877. The sovereignty of the Acoma Pueblo has been recognized by the governments of three occupying powers, Spain, Mexico and the United States. Under President Lincoln's administration, the Acoma pueblo, along with other pueblos in the territory, received a silver-headed cane as a symbol of tribal government authority and of the United States recognition of the Acoma Grant.

With the formation of the Bureau of Indian Affairs, the Acoma Pueblo and all other Indians in the nation became wards of the U. S. Government. Decisions were often made for the Indians without first consulting the tribes, and all land was held in trust for the Indians, as it is today. No Indian land could be sold or traded.

The current population of Acoma exceeds well over the 3,000 mark. Although many of the residents are temporarily residing off the reservation, for employment and other reasons, they will eventually return to the reservation after their retirement or completion of the work project. On the basis of the current trend of returning to the reservation and the steady growth of our population, the question arises of how or where to get more water to supplement our needs becomes paramount in

Exhibit No. 18—Continued

Page 2 - Indian Civil Rights Hearings.

in our minds.

Water is extremely scarce on the Acoma reservation and we have time and again brought this matter to the attention of the people in the Federal Government for financial assistance in the development of adequate water supply to keep in pace with the steady growth of our population. However, our constant pleadings for more water has not been forthcoming nor have we received any favorable assurance that our demands would be taken care of, although we have kept this matter alive by frequent correspondence, from time to time, to those in the position to help us. In the meantime, our demand for more water keeps mounting with the steady growth of our population and the development of new housing to offset the growth in population.

The need for domestic water development, on the Acoma Reservation, is high on our priority needs. Since we cannot progress without water, we most urgently need help by the Federal Government to bring about the solution to this long standing problem. We are becoming more disturbed and impatient, as time goes by, because of our long neglected pleadings for help, in this most important source in our lives.

We are in sympathy with many of our people who are still without domestic water facilities and have to haul water daily from distant wells for their domestic needs. Of course this creates added hardship on those without transportation who have to pay from their meager income for hauling services.

Prior to the building of the Bluewater dam, the people of Acoma enjoyed a simple pastoral life; their wants were few and water was plentiful. Most of the people were successful farmers as they farmed principally for subsistence purposes and everyone who farmed reaped adequate harvest for family needs. However, in the recent years, all this has changed. Part of this dilemma was brought about with the discovery of the uranium

Exhibit No. 18—Continued

Page 3 - Indian Civil Rights Hearings.

ore in the Grants - Bluewater area in 1948 which subsequently brought in a large influx of people seeking job opportunities in the newly developed mining industry. Grants suddenly became a boom town and attract thousands of people to the area, as well as, other industries like construction of new housing, hotels, motels and new business establishments. With the building of mining and building industries in the Grants area we felt a tremendous decline in our water source and as years went on, the situation became more critical as our people were forced to abandon their farms which was once their principal means of subsistence. With the advent of this decline our people were forced to look to other means for survival. The once prosperous farmlands in the Rio San Jose Valley is almost totally abandoned, except for a few isolated plots here and there. The reason for all this change is water. The once adequate water flow in the Rio San Jose stream has diminished to a low level, insufficient for any substantial farming.

Long before the white settlers moved into the Bluewater valley, the Acoma boundary extended beyond the present Bluewater dam and northward to what is now the town of Thoreau.

In 1894 a small earth dam was built at what is now the Bluewater Lake. this dam was washed out in 1905 and was immediately rebuilt. This time the dam was built to a height of 35 feet. The dam was washed out again in 1909 and was not rebuilt until 1926, at which time a concrete arch dam, approximately 70 feet high, and capable of storing 53,000 acre feet, was built.

Many of our older people recall many gusher like springs that prevailed in what is now the town of San Rafael, Grants and Horace areas. These springs were sacred shrines of the Acoma people. The springs are no longer there; they have all disappeared, possibly due to tapping of underground water source and diverting the water to the mining and

Exhibit No. 18—Continued

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mills industry in the Grants - Bluewater areas.

By building of the dam at Bluewater lake, we believe our water rights were violated, because we were never, at any time, notified of its construction. Since the Acoma Indians were here and used the water which originally flowed from the Bluewater Valley watershed and into the Rio San Jose which flows across the Acoma reservation, long before New Mexico was governed by Spain, Mexico or by the United States. This is the reason we have "prior," "aboriginal," or "immemorial," rights to the water.

The Federal Government has neglected its duty and responsibility of safeguarding and protecting our water rights. There is every indication that the building of the Bluewater dam, without our prior knowledge and consent, may have violated our aboriginal rights to the water and there is need for a thorough, comprehensive study and investigation to determine the extent of our water rights which is stored in the Bluewater Lake. Congressional action and legislation is needed to preserve and protect our rights in any present and future encroachment of our water rights...

Exhibit No. 18—Continued

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The Federal Government has not always been sympathetic in our cause nor has it kept its promises by treaties to the Indians to provide adequate education for every child of the tribe.

At present, the extent of our educational facilities on the Acoma reservation is limited to two elementary school units. A day school built in 1926, by the Bureau of Indian Affairs, which is obsolete, inadequate and dangerously overcrowded. The other unit is a small makeshift kindergarten facility consisting of two rooms which is also overcrowded.

Our attitude has always been of positive nature in respect to the education of our children and we intend to continue with this policy of encouraging our children to follow in their pursuit for the best education possible.

If we are to follow through with our plans, to provide a better education for our children, then, too, the Federal Government must keep its promise to provide us with adequate and up-to-date school facilities.

I am sorry to say that the Federal Government has not always kept its promises as evidenced by the recent cutbacks in Federal spending which affects all the Indians. This adds to a long list of broken promises. The proposed construction of the new Elementary and Junior High School, on the Acoma reservation, is affected by these cutbacks in Federal spending. The construction of the new Elementary and Junior High School which was to have started in Fiscal Year 1973, was removed from the priority status and replaced by other projects considered higher in priority. Of course this action was a big disappointment to us, but we were again reassured that the construction funds would be available in the Fiscal Year 1974, only to be informed later that further cutbacks in Federal spending would again curtail all construction work in the Fiscal Year 1974.

Exhibit No. 18—Continued

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These continuous adverse tactics by the Federal Government violates our rights and the rights of our children. by treaty obligations of the Federal Government in providing us with suitable and adequate education.

We cannot comprehend what could be higher in our demand for a decent education for our children. Unless it is because the Federal Government insists on a continued support of the war effort in the southeast Asia which has cost the American taxpayers billions of dollars. The billions of dollars spend in the war effort cannot be considered as material gains but rather a loss in countless thousands of human lives and the devastation of billions of dollars worth of material things. We insist and demand that the Federal Government take another look at this waste in spending and put the money where it would do the most good for the sake of our people.

We further demand that our schools be brought up to the national standards comparable to public schools system, so that our children may better qualify themselves to meet the challenge in pursuing the higher level of education. Only by an all out effort in this direction can we hope to achieve our goal and the implemmentation and consideration of the following conditions:

1. A higher quality and standard of education for our children. This includes recruitment of teachers with strong academic backgrounds who are symmathetic with Acoma children.
2. Provide tutors for students at high school level and first year in college to help them prepare and adjust to the requirements.
3. New and innovative methods of classroom instructions with emphasis on social studies program that includes Indian culture and awareness of traditional structures.
4. Increased development of the children's oral and written communi-

Exhibit No. 18—Continued

Page 7 - Indian Civil Rights Hearings.

cation skills.

The recent activities of a small group of Indian militants, in Washington, D. C. induced widespread publicity in newspapers, radios and television coverage. Although we are opposed to their methods of arousing public sympathy, we do believe that their cause may have been better emphasized by peaceful demonstration in making the public aware of their plight. The millions of dollars destroyed in property cannot be compared to the billions of dollars spent by the Federal Government in useless destruction of human lives and property in order to carry on the war effort in the southeast Asia.

Why not put this money to better use by raising the living and economic standards of the countless millions of Americans who are in dire need of help?

Attachment - Letter to Benny Atencio, Chairman, AIPC

Exhibit No. 18—Continued

6101 La Corrida N. E.
Albuquerque, New Mexico
March 3, 1972

Mr. Benny Atencio, Chairman
All Indian Pueblo Council
907 Indian School Road, N. W.
Albuquerque, New Mexico

Dear Mr. Atencio:

I would like to inform you of a recent encounter I had with the New Mexico State Public School Administration concerning the use of the Johnson O'Malley funds. In order to give you a better understanding of my involvement in this matter, I feel it necessary to give you some history as to the events that transpired leading up to this incident.

Since I took up residence in Albuquerque in 1956, at which time I purchased my home, I have resided here all these years fulfilling my obligations as a citizen and a tax-payer of the city and the State of New Mexico while maintaining my tribal membership at the Laguna Pueblo through the fulfillment of my obligations there too.

Since my oldest child entered the Albuquerque Public Schools in 1960 and subsequently my other two children in 1962 and 1965, they have brought home cards every year requiring information regarding their degree of Indian blood and their tribal affiliation along with information as to whether the parents worked for the federal government on or near a governmental installation. I had never thought anything more about these cards than their possible purpose of providing census information for the compilation of statistics. It was only in 1971 that I learned that these cards did not only provide statistical information but were used as a basis for requesting funds from the federal government through various sources, two of which were the Johnson O'Malley and Impact Aid funds. After learning about the nature of these cards in 1971, I inquired at the schools as to why my children were not receiving any benefits normally derived from these funds. After the principals had investigated the matter, my children were finally given free hot lunches at the schools that they should have been receiving since their enrollment but have had to pay daily for their meals there.

It is my understanding that the original intent of the Johnson O'Malley funds was to defray the costs of educating reservation students attending public schools, whose parents pay no school or property taxes. The funds were later increased to cover the costs of school supplies, extra-curricular activities, various school-related fees, and free hot lunches. I have assumed all these costs for the past fifteen (15) years without any assistance from any sources and have cooperated to the fullest extent possible with the schools in their various requests. Whether these benefits were ever provided to the other Indian students in a similar

Exhibit No. 18—Continued

status as my children, is a matter of question, and a good subject for research.

My oldest daughter, Aleta, was a representative for Del Norte High School here in Albuquerque to the State Student Council at Hobbs, New Mexico which was held on February 10 through 13, 1972. Since this is a school-related activity, I inquired about the possibility of her expenses being paid out of the Johnson O'Malley funds, which amounted to approximately \$50.00. The original reply I received stated that she was eligible until one week before her departure, when she was informed she was ineligible because she was considered to be an Urban Indian. After checking with Mr. James McLarry of the New Mexico State Department of Education, Indian Division, Santa Fe, New Mexico, he decided against giving her this assistance based upon an out-dated document he was using and his misinformed idea about the rights and benefits of Urban Indians. He further stated that the Isleta Pueblo students and the Canoncito Navajo students were the only ones eligible to receive benefits in the Albuquerque Public Schools and that he made these determinations himself. I have six witnesses to this statement. I suggest that Mr. McLarry update his knowledge of current policies and practices regarding the administration of these federal funds as well as the nature and variety of the clientele he is supposedly to serve, instead of relying on preconceived notions and mistaken ideas in order to make more rational determinations than he is now capable of doing.

Because, I am a tax-paying citizen of Albuquerque and a member in good standing of the Laguna Tribe, I feel that I am entitled to benefits accrued to members of both of these communities. My understanding of the current policy regarding the use of the Johnson O'Malley funds states that benefits can be accrued to any Indian of 1/4 degree Indian blood who resides on or near an Indian reservation; therefore, I feel that my children rightfully deserve the benefits from these funds because:

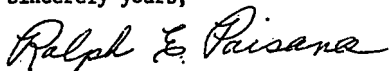
1. They have been repeatedly used in the count for requesting these funds.
2. They are members of the Laguna Pueblo maintaining full rights and privileges of the Tribe.
3. They are members of a Tribe whose reservation is 18 miles from Albuquerque, which is closer than Canoncito.
4. They have paid all costs to school-related activities that should have been paid out of these funds for the past fifteen (15) years.

My family is but one Indian family in Albuquerque who has undoubtedly been through this unethical practice by the State Public School System and has had information regarding benefits made unknown to us and it is time that some corrective action take place. I am, therefore, asking you to make an investigation into this matter which I feel is of utmost

Exhibit No. 18—Continued

importance to the education of our Indian children. I will be most grateful to you in this matter and I will assist in any way possible.

Sincerely yours,

A handwritten signature in cursive script that reads "Ralph E. Paisano". The signature is written in dark ink and is positioned to the right of the typed name.

Ralph E. Paisano

Exhibit No. 18--Continued

Page Indian Civil Rights Hearings.

The intended closure of the Roswell Employment Training Center, by June 1973, is just another broken promise of upgrading the employment level of the Indians. The usual excuse of "no funds" or other higher priorities is just another gimmick of the Federal Government to deny the Indians the right of equal job opportunities.

If there are no funds, then why does the Federal Government insist on spending billions of dollars in supporting the war effort in the southeast Asia? Is this a worthy cause? It is obvious to see that it is all a waste of taxpayers money, considering the fact that billions of dollars are spent to destroy human beings and destruction of billions of dollars in property.

In spite of all the waste of money, the Federal Government keeps ignoring the conditions that prevail among the most neglected group of Americans--the Indians.

Under the Indian self-determination policy, the President of the United States stated on July 8, 1970, "The Indians are to make their own decisions determining their future of their own destiny." Then how can this policy persist if the Federal Government keeps denying us the equal job opportunities.

The Bureau of Indian Affairs is the worst offender in this respect. Although the Bureau employs a large percentage of Indians, they occupy positions in the lower echelon while only a handful occupy supervisory positions.

The Federal Government appropriates millions of dollars for the benefit of the Indians, but only an insignificant sum reaches the Indians. The bulk of the millions goes to pay the salaries of the Bureau employees, a large percent of whom are non-Indians holding top positions. Whereas, most of the Indian employees hold the lower positions.

Exhibit No. 18—Continued

Page Indian Civil Rights Hearings.

The Bureau of Indian Affairs has a long record of discriminatory practices toward the Indian employees. Although their policy of equal job opportunities for all, regardless of race or sex, their discriminatory practices continue to prevail.

There are many qualified and capable Indian employees in the BIA, but they are often by-passed in filling top positions in preference to non-Indians who had no previous work experience in the Bureau. Most of the non-Indians start at top positions with top pay without having to work their way up as the Indians do. These non-Indians, without previous experience in the Bureau, are trained in the fundamentals by the Indian employees. Yet the Federal Government knowingly allows these conditions to exist. Many of the non-Indians can easily obtain jobs elsewhere outside of the Bureau and leave their jobs to be filled by qualified Indians. It is high time the Indians be given equal job opportunities.

Discrimination is the policy of the Federal Government (BIA) for direct loans from the United States to Indian Federal employees. Several denials have been made against Indian Federal employees who had requested loans from the BIA's revolving credit fund.

We have a large number of Acoma Pueblo Indians employed by the Bureau of Indian Affairs and other Federal agencies and still reside on tribal lands. If the Federal Government is going to impose a ruling on eligibility of loans on these Indian employees, it will seriously handicap these people's efforts in raising their economic and social standards, especially since financing on home construction on tribal lands are not usually available through other sources. Also financing is often requested by these people in areas of housing, home improvement, etc. At the present time, families with low income or no in-

Exhibit No. 18—Continued

Page Indian Civil Rights Hearings.

come are being assisted and provided with better housing through Mutual-help housing program, Home Improvement Program under OEO, and welfare assistance. However, Indians employed by the Bureau of Indian Affairs are usually ineligible to receive these houses from these same sources and they are again forced to seek financial assistance from other sources.

It is also known that often times these same Federal employees of BIA are in lower grades in their positions and in many cases receive smaller salaries than people who are either self-employed, employed by State, or other private business like the mines; therefore, their needs for financial aid is greater...

Exhibit No. 18—Continued

There are several major health problems among the Acoma people. Unless ways and means can be found to enable the growing Acoma population to make a decent living, the health problem will remain of great concern. There are no adequate medical facilities on the Acoma reservation and no full time doctor. The size of our medical facility is a small clinic which handles only minor cases, other major problems are referred to hospitals in Albuquerque and Gallup.

There have been small reports of discriminatory practices existing at Bernallio County Medical Center in Albuquerque, New Mexico, Laguna Indian Medical Center, New Laguna, and the private owned Cibola General Hospital in Grants.

Frequent complaints are directed to the Cibola General Hospital by the Acoma members who have tried to obtain medical services but refused. On certain occasions people have made calls to the hospital for medical attention, but were turned down because they were Indians. However on other occasions they have welcomed people of hippie type characteristics for the same services denied the people of Acoma.

The Bernallio County Medical Center was originally known as Bernallio County Indian Hospital but changed to a more broad term eliminating the inclusion of Indian. Whether this tactic was used to eliminate the Indians completely from any future medical services, only those in the supervising capacity will be able to clarify. At any rate, there are frequent complaints coming from the Indians who have tried to obtain medical services at B.C.M.C. but were refused because they did not look Indian or have the proper identification to prove that they are Indians.

On another occasion a member of Acoma Tribe was suffering from a severe case of convulsions, and was taken to the nearest hospital at Grants Cibola Hospital, but was refused admittance because the doctor claimed there was nothing wrong with him, so the family had to take him to the B.C.M.C. in Albuquerque.

During this trip to Albuquerque, the individual continues to suffer from convulsions. When finally arriving at B.C.M.C., he was told to wait until the doctors

Exhibit No. 18—Continued

were through drinking their coffee. In the meantime the patient suffered more convulsions, but was completely ignored until finally five hours after arriving at B.C.M.C., finally someone took the time to ask the family what was wrong with the patient. They were then told to take the patient to the Public Health Service next to B.C.M.C.

This gross negligence, total disregard, and inhuman treatment of the Indians needs a thorough investigation.

The Laguna Health Clinic is equipped to handle only minor clinical cases and all major emergency, and borderline cases are referred to major hospitals, a distance of 60 to 70 miles from Acoma.

Although the Cibola General Hospital in Grants is located but 20 miles from Acoma, it is being discouraged by Dr. Gross of the Laguna Medical Center who insists on making his own rules not in conformity with the P.H.S. policies

These persistent incidents troubled by the Acoma people justifies the need for an all-out effort by the Federal Government to speed up the construction of the proposed new hospital on the Acoma Reservation.

If our peoples health is to be safe guarded, then the Public Health Services must take a closer look at our health problems. One of the problems which has plagued the people of Acoma is domestic water supply, which has high contents of unacceptable minerals hazardous to health. A recent analysis of the McCarty water was made by the Area Sanitarian, Tom Willett, which shows the sulfate count to be 539 parts per million, U.S. Government standards allow 250 parts per million. Yet the Public Health Services knowingly allow these conditions to exist.

In the recent years, the health problems at Acoma have become more numerous,

Exhibit No. 18—Continued

due to contaminants of our domestic water supply caused by improper sewage treatment in the Grants area. This contamination of our water supply is even more noticeable in the McCartys area. It has been reported by the health workers that the McCartys Village has a high rate of dental problems and there are frequent complaints of intestinal disorders, possibly caused by the bad water.

The Indian Health Services and Public Health Services is responsible in providing us with proper medical services. It is useless to advocate certain health practices which is the nature of existing conditions cannot be achieved. How can people wash their hands before eating when water is so scarce and so precious. How can we have adequate housing, clothing, eating utensils, soap diversifies balanced diet, when the per capita wealth is too low to purchase these device for living? Health is purchasable, but it takes money to do the buying, and the Acoma people do not have the resources.

The Federal Government must satisfy the medical needs of our people in order that they may enjoy the same services offered to other citizens of America.

ATTEST:

James C. Johnson
Secretary, Pueblo of Acoma

Mary L. Martin
Governor, Pueblo of Acoma

Joe C. Fay
1st Lieutenant Governor

Frank Harless
Head Councilman

Francis Harless
Councilman

Walter Valdes Jr
Councilman

Exhibit No. 19

**EMPLOYMENT SECURITY COMMISSION
OF NEW MEXICO**

LOUIS R. BACHICKA
CHAIRMAN--EXECUTIVE DIRECTOR

December 11, 1972

U. S. Civil Rights Commission
Office of the Staff Director
1121 Vermont Avenue NW
Washington, D. C. 20425

Gentlemen:

During the hearing in Albuquerque on Wednesday morning, November 15, 1972, you requested me to furnish you with specific additional information. Governor Bruce King has requested us to cooperate in every way possible. One item you requested additional information on was the number of Indians employed by this agency by classification. That information is as follows:

Interviewer	8
Interpreter Interviewer	4
Employment Counselor	2
Stenographer	5
Personnel Records Technician	1
Accountant Auditor	1
U I Claims Examiner	1
Claims Processor	2
Manager	1
Clerk	1
Employment Aide	3
Employment Agent	9
Secretary	<u>1</u>
TOTAL	39

In addition, we are attempting to hire five more Indians in classifications of Interviewer and Interpreter Interviewer.

Data on individuals placed, by occupation, for Fiscal Year 1972 is available for total, but occupational breakouts by racial groups are not available in the standard ESARS reports package. This standard report procedure has been

Exhibit No. 19—Continued

U. S. Civil Rights Commission - December 11, 1972 - Page 2

developed by the U. S. Manpower Administration and is required of all agencies such as ours in all states. Total and Indian individuals referred and placed data are available for total nonagricultural and total agricultural industries, by category of permanence on the job as indicated by the following table:

	<u>Total</u>	<u>Indian</u>	<u>Percent Indian</u>
Agricultural Referral	2,123	100	4.7
Nonagricultural Referral	39,228	2,782	7.1
Total Placements	16,979	1,591	9.4
Nonagricultural	16,513	1,554	10.0
Over 150 days	12,015	1,014	8.4
4 - 150 days	2,053	204	9.9
3 days or less	4,218	568	13.5
Agricultural	888	65	7.3
Over 150 days	330	16	4.8
4 - 150 days	424	39	9.2
3 days or less	223	14	6.3

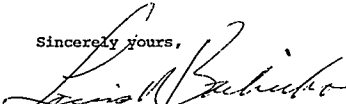
Source: ESARS. Does not include mass placements.

Late in Fiscal Year 1967, this agency received supplemental authority for 21 additional positions on an annualized basis. The additional positions were for the purpose of specific services to Indians and commonly referred to as Indian HRD. I am attaching a copy of the correspondence and approval for the additional 21 positions for Fiscal Year 1968. The 21 additional positions were identified separately and funded as such. The Department of Labor mandated changes in budget procedure and beginning with Fiscal Year 1969 through the present fiscal year required assimilation of the positions as an inclusion in our base budget. This was done following the concept that this agency should be staffed to provide employability services to all ethnic groups. Copies of pertinent portions of both Fiscal Year 1968 and Fiscal Year 1969 budget documents are also attached.

I am also including in the attachments work statements and/or current contracts that specifically pertain to services to Indians.

If I can be of any further assistance to your Commission, please let me know.

Sincerely yours,



LOUIS R. BACHICHA
Chairman-Executive Director

Attachments

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Exhibit No. 20



BRUCE KING
GOVERNOR

STATE OF NEW MEXICO
OFFICE OF THE GOVERNOR
SANTA FE
87501

January 8, 1973

Mr. Stephen Horn
Vice Chairman
U. S. Commission on Civil Rights
Washington, D. C. 20125

Dear Mr. Horn:

Attached is a statement for the record for the U. S. Commission on Civil Rights Hearing held November 15, 1972 in Albuquerque, New Mexico. Thank you for inviting me to submit this statement.

Sincerely,

Bruce King
BRUCE KING
Governor

BK/lv

**STATEMENT
OF
BRUCE KING
GOVERNOR OF NEW MEXICO
to
U.S. COMMISSION ON CIVIL RIGHTS HEARING
November 15, 1972
Albuquerque, New Mexico**

Exhibit No. 20—Continued

I want to thank very much the U. S. Commission on Civil Rights for giving me an opportunity to present a statement reflecting achievements and otherwise presenting views concerning Indians in New Mexico as they relate to State government, and specifically in the areas of Indian employment opportunities, Indian water rights and Indian health care.

Certainly, I feel that in the first two years of my administration we have achieved considerable advancement concerning State government relations and assistance to Indians in many areas. I would begin by repeating a statement I made on January 19, 1971, shortly after I took office, to the opening session of the 30th New Mexico Legislature:

"More than 70,000 citizens of our State are Indians--members of the 19 Pueblos, the Navajo, and the Jicarilla and Mescalero Apache Tribes. They are important members of our community...Their welfare and advancement are as vital to the State as are those of other citizens...We should take steps to make absolutely certain that our Indian citizens are getting their fair share of the programs that their taxes support and that they are consulted concerning those legislative and administrative measures that will affect them. Nowhere is the need greater than in the areas of employment and economic development."

Since that time during my administration, the State has pursued a conscious and concerned policy of involving Indians in its decision-making policies and of insuring that Indian communities derive maximum benefits from State sponsored and funded programs. I believe that during this time we can point to many concrete accomplishments.

In the area of employment, I would start by pointing out that we have at present time about 210 Indians employed in State government. While this number admittedly constitutes only about 2% of the total of State jobs, which is under the 7% proportion of the population which Indians make up, it does represent at least a 50% increase in the employment of Indians since I took office in January, 1971, which in view of difficulties we have encountered in recruiting Indians to State employment is at least creditable.

We have taken specific steps to place Indian employees in key positions where their activities will have a "multiplier effect" in increasing opportunities for Indian employment in the community at large as well as within State government. For example, an Indian is employed as an Indian Affairs Coordinator at the State Planning Office where he works with Federal, State, and Indian units of government to insure the Indian needs and attitudes are fully reflected in State plans and planning processes.

In another case, my Criminal Justice Planning Council has employed an Indian as its Justice Specialist. This individual was strategically placed to influence the flow of the State's portion of funds from the Justice Department's Law Enforcement Assistance Administration and of State funds to Indian communities. As a result, at least 17 grants were allocated to Indian groups last year, opening up a large number of opportunities for additional Indian employment. These are only but two examples. There are others, but for the purposes of this hearing, I will just say we will vigorously continue this policy.

Exhibit No. 20—Continued

I might point out that one major hindrance to the employment of Indians in State government is the low number of State jobs in areas of major Indian population. For example, a full 71% of New Mexico's Indian population live in three counties--San Juan, McKinley and Sandoval--which have only 3.2% of the total State jobs. This means that approximately 50,000 Indians live in an area in which there are less than 400 State jobs. And, of course, it is often difficult to convince prospective Indian employees to leave their homes for the strange environment of the areas in which the jobs are located.

However, in an attempt to help alleviate the situation, I directed that the State Personnel Office set up a program to establish more direct communication with our Indian pueblos and reservations in order to make our Indian citizens more aware of the job opportunities that we do have as they occur in State government. The Personnel Office hired an Indian person to act as liaison to Indian people, travelling the State and visiting the pueblos and reservations.

Further, we have recently established a program whereby we are getting the tribal councils and governments to designate one person from each pueblo or reservation to be their liaison with State government. At State expense we bring each one of these persons to our Capital and train them in filling out State job applications, in administering State Personnel tests, and generally in how to facilitate seeking employment with the State. These liaison persons then return to their pueblo or tribe to make known to the general Indian population what job opportunities are available, how to apply for them, how to take the test. The Personnel tests are actually administered to Indians by Indians.

Exhibit No. 20—Continued

In an area involving both employment and water rights, in September of this year I recommended federal legislation authorizing the Secretary of the Interior to contract to furnish 28,250 acre-feet of San Juan River water to El Paso Natural Gas Company to be used in the mining and utilization of Navajo coal on the Navajo Reservation through the construction of coal gasification plants. On September 12 I asked the Secretary of the Interior to expedite the negotiations and the drafting of legislation to effect such a contract.

I would point out that I took this action only after I personally secured agreement from El Paso Natural Gas Company that it would to the greatest extent possible employ Indian people in both the construction and operation of these plants and mines. This will literally mean thousands of new jobs for Navajos.

In the area of water rights, I will point out that the State Engineer's office and the New Mexico Interstate Stream Commission has consistently supported the cause of Indian water rights.

In the negotiation of the Upper Colorado River Basin Compact of 1948 the New Mexico Interstate Stream Commission contended for an allocation of water to the State of New Mexico sufficient to provide for a large irrigation project for the Navajo Indians. The Commission strongly supported legislation which authorized the construction of the 110,630 acre Navajo Indian Irrigation Project in 1962 (P.L. 87-483).

Representatives of the Interstate Stream Commission participated in the reevaluation of the Navajo Indian Irrigation Project directed by the Secretary of the Interior in 1966. This reappraisal resulted in a report recommending that the project be constructed to the size originally authorized (Reevaluation Report - Navajo Indian Irrigation Project, New Mexico, July 1966).

Exhibit No. 20—Continued

Subsequently the Interstate Stream Commission successfully supported legislation (P.L. 91-416) authorizing the acquisition of additional lands for the Navajo Irrigation Project and increasing the appropriations ceiling originally authorized from \$135 million to \$206 million. New Mexico governors have consistently and vigorously supported appropriations for the Navajo-Indian Irrigation Project in excess of the amounts proposed in the President's budget.

The State Engineer in 1958 issued a permit to the Utah Construction Company to withdraw 55,000 acre-feet annually from the San Juan River for the mining and utilization of Navajo coal on the Navajo reservation. This resulted in many jobs.

Upon the recommendation of the New Mexico Interstate Stream Commission the legislation which authorized the Navajo Indian Irrigation Project (P.L. 87-483) also authorized the San Juan-Chama Diversion Project and its tributary irrigation units. This authorization would provide a full water supply for about 1900 acres of new lands for the San Juan Pueblo Tribe in the Llano unit, and a supplemental water supply for about 50 acres of Santa Clara Pueblo lands in the same unit; and a supplemental water supply for about 900 acres of San Ildefonso, Pojoaque and Nambe Pueblo lands in the Pojoaque unit.

Authorization of the San Juan-Chama Project and its tributary units made it essential to adjudicate the water rights in the areas affected by the tributary units and in the area served from Rio Chama. The State of New Mexico ex rel the State Engineer and the United States of America on behalf of the Pueblos mentioned above, the Tesuque Pueblo and the Jicarilla Apache Tribe, are co-plaintiffs in four suits in the Federal District Court to define the nature, extent and priority of all Indian and non-Indian water rights is a matter of great importance to the development of the natural resources of the Pueblo Indians.

Exhibit No. 20—Continued

By oral communication the State Planning Office and the State Engineer Office recently were advised that the Isleta Pueblo was interested in funds appropriated by the Legislature to the State Engineer for grants to assist in the rehabilitation of irrigation ditches in the State, but was concerned that the State Engineer might claim some jurisdiction over Indian water rights on the basis of such a grant.

General Counsel for the State Engineer by letter dated September 11, 1972, advised officials of the Bureau of Indian Affairs that in his opinion Isleta Pueblo ditches were eligible for the grant and that such a grant would have no effect whatsoever on the State Engineer's jurisdiction over Indian water rights. We have been informally advised that the Pueblo will proceed with the work without requesting a grant from the State Engineer.

Representatives of the Bureau of Indian Affairs have requested a grant to assist in canal lining on the Fruitland Irrigation Project on the Navajo Reservation. The Bureau of Indian Affairs representatives have been advised that under the terms of the legislation appropriating the money, the State Engineer can contribute a maximum of \$10,000 to the work. The State Engineer's Office is now preparing the necessary contract with the Irrigation Operations and Maintenance Department of the Navajo Tribe.

In 1970 the State Engineer contracted with the Office of Saline Water for a study and a report entitled "The Potential Contribution of Desalting to Future Water Supply in New Mexico." The Office of Saline Water contributed \$42,475 to the study which was made by the Southwest Research Institute under a contract with the State Engineer. Zuni Pueblo was one of the five communities selected. The study will be useful in the development of water supply for the Pueblo in the future.

In 1971 an Economic Development Administration grant to the Mescalero Apache Tribe for the construction of a dam and reservoir project for recreation was being delayed because of uncertainty with respect to the water rights of the Tribe. The State Engineer cooperated with tribal officials in an investigation to determine the practicably irrigable acreage on the reservation.

In my opinion the greatest obstacle to the response of the State to Indian water needs is uncertainty with respect to the nature, extent and priority of Indian water rights. This obstacle can be overcome through adjudication suits. This will make it possible for the State Engineer to protect Indian water rights against adverse effects from junior appropriations and will give the Indians assurance that they can accept the State assistance that is available without jeopardizing their water rights.

In the area of health care, the third specific point of inquiry of this hearing, I would note that the Bureau of Indian Affairs has the primary responsibility for on-reservation health care. However, through the State Health and Social Services Department, clinical health care is available to Indians in every county in New Mexico.

Specifically in San Juan and McKinley Counties, where 60 per cent of the Indian population of New Mexico reside, immunization, family planning, tuberculosis and venereal disease health care services are provided. A number of HSSD personnel participate in both on and off reservation medical surveys, epidemiological follow-up and educational programs. Navajo nurses are employed in these State offices.

The HSSD provides thousands of dollars of vaccines to the Bureau of Indian Health each year.

As well, HSSD provides crippled children's services to Indians and other health delivery projects.

Exhibit No. 20—Continued

In addition to HSSD, the New Mexico Department of Hospitals and Institutions provides institutional treatment and health care for Indians in a number of areas.

While the areas of discussion of this hearing concern only Indian employment opportunities, Indian water rights, and Indian health care, I would like to point out that the treatment and relationship of Indians with State government cannot be characterized without taking into consideration the total services and assistance provided by New Mexico.

Seventeen years ago the State Legislature, recognizing the special importance of our Indian population, created the New Mexico Commission on Indian Affairs. For the first 15 years it functioned largely as an agency monitoring Indian matters in the State. In the past two years, however, since I have taken office, the agency has shifted to one which is working to provide action and service to Indian tribes in New Mexico.

This is due both to the emphasis I have placed on Indian affairs in New Mexico and to the winds of change which are sweeping across all of Indian America.

Historically the federal government has had exclusive responsibility for providing necessary services and assistance to the Indian citizens of New Mexico through the Bureau of Indian Affairs and the U. S. Public Health Service. But in the last two years, the active involvement of the Commission at the program level of Indian activity has risen dramatically.

This has been in response to a change in philosophy at the federal level and at my direction. The current direction from Washington is a stressing of self-determination for Indians. With this new direction comes a simultaneous lessening of direct program input from the Washington level and a greater dependence on state agency input for providing technical assistance and channeling of federally funded projects. The Federal Government is redirecting expenditures through agencies other than the BIA in order to fulfill its trust obligations to the Indian people.

Agencies such as Housing and Urban Development, Economic Development Administration, etc., tend to work through regional and state agencies rather than the traditional direct line to Washington which has been the rule with Indian programs in the past through the BIA.

Because of this current trend, the work load of the Commission is going to continue to increase as it acts as the coordinating agency within State government to deal with the variety of federal programs designed to fulfill the self-determination concept for the Indian citizen.

Because of its unique political jurisdiction and its trust status under the Federal Government, the Indian community must have an "amicus curiae" within the state government, if for no other reason so that all parties will know what the other is doing. The Commission makes possible the efficient utilization of federally funded programs for the Indian in concert with other State agencies, particularly the State Planning Office. Specifically, some of the high priority objectives of this agency include:

- Systematic communication between the tribal governing bodies and various State agencies concerned with providing services to the tribes.
- Close coordination and provision for technical assistance to the State's public school system. The increase in the enrollment of Indian pupils in the public school system continues as BIA phases out of the education business altogether.
- Training and technical assistance to the Indian communities and to staff members of the Employment Security Commission in order to ensure that federally funded manpower programs will be available to the Indian community as well as determining that communication between ESC and tribal officials will create an atmosphere which provides for the most efficient use of the State's human resources.

Exhibit No. 20—Continued

- Coordination of the activities which fall under the Governor's Council on Criminal Justice Planning through which in two years we have already channeled more than \$1 million into Indian justice and law enforcement systems, areas which are primarily federal responsibilities.
- Total active participation in the area of Indian economic self-determination. This is an all encompassing area of concern for it includes providing assistance to orderly development of human resources within the Indian communities. This is a critical area in terms of coordination with State government.
- Supplying appropriate information to the Governor, legislature and legislative committees in all matters of mutual concern between the State and the Indian communities within the State. It will also monitor legislative sessions and keep the Commission apprised of all proposed legislation which might have an impact on Indian people.

As I stated before, the State Planning Office, in conjunction with the Indian Affairs Commission, has worked very diligently in the Indian area. More than one-fifth of all Four Corners Regional Commission funds approved by me through that office have been for the benefit of Indian communities. These grants have resulted in projects totaling \$4.3 million of direct benefit to Indian citizens in our State and creating numerous job opportunities for Indians in the process.

The State Planning Office has allocated nearly \$1 million in outdoor recreation grants to Indian tribes.

Exhibit No. 20—Continued

Many other State agencies have closely served our Indian citizens. The State developed the Navajo Concerted Employment Program and the North Central Concerted Employment Program which serve Indian clientele almost exclusively. Together, these programs served more than 1,000 Indian persons in 1972.

The State Employment Security Commission estimates that several thousand Indian persons were placed in employment through their facilities during 1972.

Our Health and Social Services Department provides millions of dollars each year in direct financial assistance, food, establishment of child care centers and other programs. Of course, we do want to reduce the financial assistance aspect by encouraging and assisting Indian economic and self development to a point where our Indian citizens could be totally self-sufficient.

I will not take the time to detail every program of benefit to Indian citizens which have been undertaken by other agencies but suffice it to say that major support and assistance to Indians have come from the State Labor and Industrial Commission, the New Mexico Law Enforcement Academy, the Office of the Commissioner of Public Lands, the State Park and Recreation Commission, the New Mexico State Police, the Department of Education, the Department of Development, the Governor's Comprehensive Manpower Planning Council, the Department of Game and Fish, the State Highway Department, the Commission on Alcoholism, the Commission on Aging, the Committee on Children and Youth, and many others.

And certainly we are very proud of the many fine Indian citizens we do have serving on boards and commissions in State government. They certainly do a very excellent job.

Exhibit No. 20—Continued

I can say without question that I have personally established a very fine relationship with the Indian leaders of our State including Peter McDonald, Navajo Tribal Chairman, whom I had the great honor recently to recommend to President Nixon for appointment as the Commissioner of Indian Affairs; Mr. Wendell Chino, Chairman of the Mescalero Apaches; Mr. Hubert Velarde, Chairman of the Jicarilla Apaches; and the many fine governors of the 19 Pueblo Tribes such as Governor Robert Lewis of Zuni, Quirino Romero of Taos, and many others; and leaders such as Benny Atencio, Chairman of the All Pueblo Indian Council.

Of course, we know there is much to be done in the area of Indian development. Certainly we will continue to give our best efforts, to improve our record of Indian achievement, and to do everything we can to see that our Indian people are accorded the full benefits of our country and our State to which they are entitled as citizens.

Thank you very much for the opportunity of presenting this statement. I look forward to continuing to work with the U.S. Civil Rights Commission.



IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
ALBUQUERQUE AREA OFFICE
P. O. BOX 8327
ALBUQUERQUE, NEW MEXICO 87108

JAN 12 1973

AIRMAIL

Chairman
U.S. Commission on Civil Rights
1121 Vermont Avenue, NW
Washington, D. C. 20425

Dear Sir:

The following comments are submitted for inclusion in your record regarding the Indian Panel discussion at the hearing held in Albuquerque, New Mexico on November 14 and 15, 1972:

a. Regarding Federal Government action taken on the All-Indian Pueblo Council's November 3, 1965, resolution, which supported the Nambé-Pojoaque Pueblos (Nambé, San Ildefonso, Pojoaque, and Tesuque) in their impending litigation and adjudication of water rights and requested assistance from BIA, Department of the Interior, and Department of Justice in gathering data and other material in preparation for the impending suit: The Agency and Area Office forwarded, in November 1965, the AIPC resolution, along with their complete support and urgent request for assistance and immediate funding for personnel to proceed posthaste with the data gathering necessary to prepare for the impending litigation.

As the result of this litigation, there are now five suits filed in the State of New Mexico to adjudicate water rights on portions of seven Pueblos and one Reservation in northern New Mexico; and supporting data to determine and establish Indian water rights are being prepared. In accordance with guidelines set down by the Department of Justice and the National Tribal Chairmen's Association, priority is given to those reservations presently involved in water rights litigation. We are encouraged that reorganization within the Bureau has provided a Water Rights Director, with whom we work very closely, and through whose efforts additional funds have been made available for this work. We feel fortunate, too, that a private foundation has given funds to further the water inventory work on Indian lands.

b. Farming is an important industry on Pueblo Indian lands. Over 5,000 acres of Indian lands have been rehabilitated through farm land development on the six Middle Rio Grande Pueblos.

Exhibit No. 21—Continued

2

c. Extensive work has been done on the Pueblo areas insofar as water resource inventories are concerned. Soil surveys were commenced on detail and reconnaissance level for all six Middle Río Grande Pueblos. Extensive work has been done at the northern Pueblos, where suits and litigation are pending.

d. The Pueblo of Santa Clara is concerned regarding the City of Espanola and others using water on or near the reservation, which includes a part of the City of Espanola. Many problem areas will be resolved when the Pueblo water rights suits are completed--one particularly including part of the Santa Clara Reservation in the Santa Cruz Suit. At the present time, however, the area adjoining the City of Espanola is in a declared ground water basin; and no one can drill or develop additional water supplies--except Indians--without a permit from the State Engineer's office.

e. Extensive work has been done on the Jicarilla Reservación insofar as water resources are concerned:

(1) The need for development and determination of water resources was started with the first ground water report of the southern portion of the Reservación.

(2) A complete soil and range inventory was made of the 742,000-acre reservation; it was completed in 1969.

(3) Numerous potential reservoir sites were studied, and projects have been proposed or developed at favorable sites.

A water resource inventory study is underway on the Jicarilla Reservación, funded by the American Indian Historical Society. An offer by the BIA to fund this study was declined. The majority of the basic data for this study has been provided to the contractor by the BIA, from previous work done on the Jicarilla Reservación.

Regarding the oft-quoted comment regarding erosion of Indian lands, we would like to point out to the Committee that the 19 Pueblos of New Mexico, since 1900 A.D., have more than doubled their total land area, from about 897,000 acres to over 1,939,000 acres. These additional lands have been acquired through the years by the various Pueblos through legislation, land purchases, land exchanges, etc.

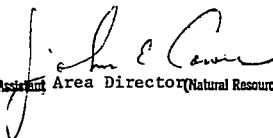
Of the total Reservación acreage in the Albuquerque Area (3,996,483 acres), over 3,457,600 have been soil surveyed and over 3,300,000 have been range surveyed by the Bureau of Indian Affairs. Basic data from these surveys are used to implement proper use of water, land, and forage to achieve maximum income for the Indian landowners. These surveys also provide much basic information needed for water resource inventories.

Exhibit No. 21—Continued

3

Indian groups have participated through the Bureau of Indian Affairs in Agricultural Conservation Programs for development of Indian resources on Indian lands. During the last 15 years, approximately \$480,000 was secured by the Pueblos through the Department of Agriculture for such projects. The BIA has provided over \$2,444,000 for range water development programs for the Pueblos during that same period. Funds from a number of sources have been secured for development of water-based outdoor recreation projects on Indian lands. Funds have been provided through EDA and other programs to assist the Indian people in the development and utilization of their resources; such funds amount to over \$980,000. Over \$1,870,000 in BIA funds have been expended on irrigation operation and maintenance on Pueblo lands. Over \$1,900,000 have been expended on irrigation construction projects on Pueblo lands. We have not always been successful in getting all the funds requested, but several million dollars of BIA funds have gone to develop and protect the natural resources on the Indian lands in this Area.

Sincerely yours,



Acting Assistant Area Director (Natural Resources Protection)

Exhibit No. 22



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
ALBUQUERQUE AREA OFFICE
P. O. BOX 9327
ALBUQUERQUE, NEW MEXICO 87108

IN REPLY REFER TO:
Natural Resources
Protection

JAN -4 1973

Chairman
U. S. Commission on Civil Rights
1121 Vermont Avenue, NW
Washington, D. C. 20425

Dear Sir:

Following is the information regarding employment and income statistics on the Cochiti Project, Cochiti Pueblo, New Mexico. This information was requested for the record by Mr. John A. Buggs, Staff Director of the Commission, during the hearings held in Albuquerque on November 14 and 15, 1972. The Cochiti Pueblo Governor and several of his council were present at the hearings and are anxious that the record be accurate:

a. Employment: (Labor Survey October 1972)

The 38 Indians employed by Atkinson Construction Company (the contractor for construction of the dam) are as follows: 21 Cochiti, 10 Santo Domingo, 1 Laguna, 1 Jemez, 3 Navajo, and 2 Apache/Navajo. The 41 Indians employed by Great Western Cities (the lessee of Cochiti lands and Cochiti City developer) are as follows: 38 Cochiti, 1 Eskimo, 1 San Juan, and 1 Chippewa. In addition, 1 Cochiti and 1 Blackfeet are on permanent status, but are presently on leave without pay at their request.

Three Cochiti Pueblo members are being sent to school by Great Western Cities to upgrade their skills. In addition to the above, there have been 80 Cochiti, 5 San Felipe, and 6 other Indians who have worked on temporary, part-time jobs. This employment has developed as a result of negotiations of the BIA on-site office working with the Cochiti Governor to obtain maximum employment of Indians with both companies. -

b. Income:

The total income to Cochiti Pueblo during the term of the lease through its third year ending May 30, 1972, was just under \$517,000 with \$276,000 being paid the last year. The fourth year's earnings starting June 1, 1972, are above a similar period of the third year,

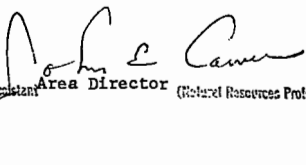
Exhibit No. 22—Continued

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so income is expected to increase for the Pueblo. Income to individual Cochiti members working on the project is not included in these figures. The Cochiti Pueblo has almost reached the point of not having Cochiti tribal members available for employment as new job openings occur.

If additional information is needed, please advise.

Sincerely yours,


Acting Assistant Area Director (Natural Resources Protection)

November 20, 1972

Mr. William H. Veeder
4234 South 35th Street
Arlington, Virginia

Dear Mr. Veeder:

Many thanks for sending me a copy of "Federal Violation of Basic Rights of American Indian People". I will be happy to make this a part of the record of our hearings and we do regret that you could not be with us to testify at the hearing.

All best wishes and many thanks.

Cordially yours,

(Rev.) Theodore M. Hesburgh, C.S.C.
President

P.S.: I am forwarding your papers to Mr. John Buggs, the Staff Director of our Commission in Washington.

cc: Mr. Buggs



United States Department of the Interior

OFFICE OF THE SECRETARY
 WASHINGTON, D.C. 20240
 4234 South 35th Street
 Arlington, Virginia
 22206

November 13, 1972

The Reverend Theodore M. Hesburgh, C.S.C.
 Chairman, Civil Rights Commission
 President, University of Notre Dame
 South Bend, Indiana

Dear Father Hesburgh:

American Indians in the arid and semiarid Western United States face destruction. Incredibly that threat stems from the seizure of their rights to the use of water by the Department of the Interior for non-Indian projects and purposes. Without water the Indians cannot remain on their Reservations for water is essential for their very survival.

On November 14 and 15, 1972, a hearing is now scheduled by the Civil Rights Commission in the City of Albuquerque, New Mexico. Effect of the seizure of the Indian rights by the Interior Department and others is a principal topic at the hearing.

Mr. John Powell, Jr., General Counsel, Civil Rights Commission, asked that I (1) prepare a written statement on the subject of the seizure of Indian rights; (2) appear as a witness at the Albuquerque hearing. Attached is a copy of that paper prepared by me at the request of Mr. Powell. It is entitled "Federal Violation of Basic Rights of American Indian People." That statement is fully documented largely predicated upon publications by Congress or the Interior Department or both.

I am advised that officials in the Department of the Interior, by which I am employed, will not permit my appearance at the hearing. Hence I am forwarding to you the statement referred to above, with the respectful request that you make it part of the record of the hearings in question. I invite response in writing to the charges which the paper contains to the end I may respond to them.

With my best personal regards, I am

Sincerely yours,

William H. Veeder
 William H. Veeder
 4234 South 35th Street
 Arlington, Virginia 22206

Enclosure

Exhibit No. 23—Continued

November 10, 1972

FEDERAL VIOLATION OF BASIC RIGHTS
OF
AMERICAN INDIAN PEOPLE

William H. Veeder

At the request of the Commission on Civil Rights, in connection with hearings now set for November 14 and 15, 1972, in Albuquerque, New Mexico, this statement has been prepared. It is directed to the basic laws and to the policies of the Department of the Interior and the Department of Justice as they pertain to what is generally referred to as the American Indian Winters Doctrine rights to the use of water which are vital to Indian survival in the arid and semiarid Western United States.

For almost three-quarters of a century the Secretaries of the Interior, frequently acting in concert with the Attorneys General of the United States, have intentionally seized, impaired, or ignored those Indian rights to the use of water for the benefit of non-Indians. That course of conduct is in clear violation of the unique Trust relationship established by the Constitution, among the United States of America and the Indian Tribes.

If the Secretary of the Interior and the Attorney General are not restrained in effectuating the policies they have adopted, the American Indians in Western United States will be deprived of their lands and their rights to the use of water. In that manner the Indians will in truth and fact be planned out of existence.

Exhibit No. 23—Continued

In the accompanying review the preceding summary is fully documented under appropriate headings.

Respectfully submitted,

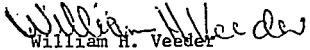

William H. Veeder

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FEDERAL VIOLATION OF BASIC RIGHTS OF AMERICAN INDIAN PEOPLE

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Exhibit No. 23—Continued

FEDERAL VIOLATION OF BASIC RIGHTS
OF
AMERICAN INDIAN PEOPLE ^{1/}

William H. Veeder

INTRODUCTION

Lives of American Indians on the arid and semiarid Reservations of Western United States are inextricably interrelated to the availability of water. Seize their rights to the use of water and as a shadow follows the substance, they are driven from their lands which they have occupied from time immemorial.

Judicial cognizance has long been taken by the Supreme Court of the United States of the imperative need for water by the American Indians. That principle is firmly established in the Winters Doctrine enunciated by the Highest Court in 1908.^{2/} Respecting the rights of Montana's Fort Belknap Indians, the Court determined, in substance, that the Indians retained for themselves rights to the use of water sufficient to make habitable the lands which they did not grant to the United States. Recognizing that Indian life would be impossible without water for use on the relatively dry and barren lands in the soon-to-be-created State of Montana, the Court declared: "The lands were arid and, without irrigation, were practically valueless. And yet, it is contended, the means of irrigation were deliberately given up by the Indians and deliberately accepted by the Government."^{3/} In rejecting the harsh contention that the Indians

^{1/} There is incorporated by reference an in-depth review of the illegal seizure by the Interior and Justice Departments of American Indian rights to the use of water: "Federal Encroachment on Indian Water Rights and the Impairment of Reservation Development" Vol. 2 of Joint Committee Print 1969, 91st Cong., 1st Sess.

^{2/} Winters v. United States, 207 U.S. 564 (1908).

^{3/} Ibid., at page 576.

ceded their sole means of survival, the Court presented these controlling facts and asked these cogent questions: "The Indians had command of the lands and the waters -- command of all their beneficial use * * *. Did they give up all this? Did they reduce the area of their occupation and give up the waters which made it valuable or adequate?" In answering its own inquiries the Supreme Court declared that the Indians retained rights to waters in the Milk River which bordered their Reservation, and restrained the non-Indian seizure of the waters to which the Indians were legally entitled. On repeated occasions the Indian Winters Doctrine rights have been recognized and upheld.^{4/}

Most recently the Winters Doctrine was applied respecting the Yakima Nation in the State of Washington. With great specificity the Court there reviewed all pertinent Winters Doctrine decrees, declaring that the Indians retained under the Treaty of 1855 rights to the use of water to meet (1) their present and (2) their future water requirements for beneficial use.

Though the cradle of the Winters Doctrine was the Upper Missouri River Basin^{5/} it has been applied in the desert areas of the Southwest.^{6/} There life or death, depending on water, of the

^{4/} Winters v. United States, 207 U.S. 564 (1908); Conrad Investment Company v. United States, 161 Fed. 829 (CA9, 1908); United States v. Ahtanum Irrigation District, 236 F.2d 321 (CA9, 1956); 352 U.S. 988 (1956); 330 F.2d 897 (1965); 338 F.2d 307; 381 U.S. 924 (1965).

^{5/} See North Dakota Law Review, Vol. 48, No. 4, Summer 1972, "Indian Water Rights In The Upper Missouri River Basin" page 617.

^{6/} See Arizona v. California, 373 U.S. 546 (1963).

aboriginal inhabitants is succinctly stated in these terms respecting a prehistoric people: ^{7/} "The Hohokam * * * is the most interesting of these ancient cultures because it partly solved * * * how to use and manage the scant supply of water to the best advantage. The word 'hohokam' means the vanished ones * * * At some point, * * * the Hohokam civilization vanished; how or why we do not know, but most authorities think it was because of a great drought that lasted for several years."

New Mexico's Pueblo Indians and their ancient civilization have been and are now dependent for their existence upon the waters of the Rio Grande. On the subject of the Pueblo use of that water, this statement has been made: ^{8/} "The land between Taos Pueblo and Socorro is the oldest continually settled section of the United States. For centuries, the Pueblo Indians have diverted water from the Rio Grande into a system of open ditches known as acequias."

In reiterating and reaffirming the Winters Doctrine - its meaning to the Arizona Indians - the Supreme Court said this: "It is impossible to believe that when Congress created the great Colorado River Indian Reservation and when the Executive Department of this Nation created the other reservations they were unaware that most of the lands were of the desert kind - hot, scorching sands - and that water from the Colorado river would be

essential to the life of the Indian people * * *."^{9/}

^{7/} See Sixteenth Annual Rocky Mountain Mineral Law Institute, 1971, "Indian Prior And Paramount Rights To The Use Of Water", page 631.

^{8/} Ibid., at page 632.

^{9/} Arizona v. California, 373 U.S. 546, 598 (1963); 376 U.S. 340 (1963).

This consideration is directed to the violation of the Winters Doctrine - "essential to the life of the Indian people" - and the shocking disregard of it and of the Indians' right to live, by the Interior and Justice Departments acting in concert.^{10/} Thus it is respectfully submitted that the Interior and Justice Departments have violated and are now violating the most sacred civil right of all - of the American Indians - the right to continue to live as American Indians.

C H A P T E R I

TRUSTEE RELATIONSHIP UNDER THE CONSTITUTION BETWEEN THIS NATION AND THE AMERICAN INDIAN PEOPLE

As this Nation prepares to celebrate its 200th anniversary, it is fitting, just, right, and proper for all of us fully to appreciate the historical and present-day relationship with the American Indians. Forgotten by many Euro-Americans are the immense contributions made by this Continent's first citizens. Quite probably they held the balance between success and failure of the Revolutionary War.

During the formative years immediately antecedent to the adoption of the Constitution - this country's organic law - the good will of the powerful Indian Nations was a matter of paramount concern. That concern was repeatedly alluded to in the Federalist by Jay, Hamilton and Madison.^{11/}

^{10/} "Federal Encroachment on Indian Water Rights and the Impairment of Reservation Development" Vol. 2 of Joint Committee Print 1969, 91st Cong., 1st Sess.; "Indian Water Rights in the Upper Missouri River Basin" pages 617; 634 et seq. North Dakota Law Review, v. 48, No. 4.

^{11/} The Federalist, No. 3, Jay, page 44; No. 25, Hamilton, pages 163, 165; Madison, No. 42, page 269.

In the hallmark American Indian decision, Chief Justice John Marshall, speaking for the Supreme Court in Worcester v. Georgia, made this statement: "12/he colonists had much cause for the apprehension, that the Indian nations would, as the allies of Great Britain, add their arms to hers."12/ Continuing, Marshall stated that the Colonies once having broken with the mother country "Far from advancing a claim to * * * Indian lands, were most anxious to secure and preserve Indian amity. In these succinct terms, the great Chief Justice described the problem confronting the Colonists in their war for freedom, "* * * the tribes * * * were fierce * * * to govern them * * * was impossible * * * they * * * were ready to repel by arms every attempt on their independence."13/ It was in that harsh climate of political reality that the former Colonies - now independent States - undertook to establish their friendly relationships with the Indian Nations which surrounded and, indeed, were interspersed among them. Peace with dignity among the rebelling Colonists and the Indians was essential.

Hence in the 1778 treaty with the Delaware Indian Nation - prior to the Constitution - it is recited that "14/* * * the United States are engaged in a just and necessary war, in defence and support of life, liberty and independence, against the King of England * * *." As a

12/ Worcester v. Georgia, 31 U.S. 350, 372 (6 Pet. 515, 549) (1832).

13/ Johnson v. McIntosh, 21 U.S. 543, 590 (8 Wheat. 543, 590) (1823).

14/ "Federal Encroachment on Indian Water Rights and the Impairment of Reservation Development" Vol. 2 of Joint Committee Print 1969, 91st Cong., 1st Sess., pages 485 et seq.

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consequence, the United States and the "Delaware Nation", parties to the Treaty, agreed as equals on vital matters respecting both sovereign nations; among them being the permission granted by the Delaware Nation to the United States for "free passage" of troops "through their [Delaware] country * * *."

Numerous other treaties with the Indian Nations were entered into by the United States.^{15/} Those treaties were and are the supreme law of the land. Treaties were made between Indian Nations and the Federal Government until 1871.^{16/} Thereafter agreements have been made with the Indians.^{17/} Many Reservations, particularly in the Southwest, were created by Executive Order or by Congressional Acts, or both.^{18/}

Pursuant to the Commerce Clause of the Constitution, there resides with the Federal Government the plenary power respecting all matters involving Indian affairs.^{19/} Exercising that power, Congress in the year 1789 originally placed under the War Department, the executive functions relative to the Indian Nations.^{20/}

^{15/} Cohen, Handbook of Federal Indian Law, page 117.

^{16/} Ibid., at page 118.

^{17/} See supra, *Winters v. United States*, 207 U.S. 564 (1908).

^{18/} See supra, *Arizona v. California*, 373 U.S. 546, 596 (1963).

^{19/} Art. I, s. 8, cl. 3: "The Congress shall have Power * * * To regulate Commerce with foreign nations, * * * and with the Indian Tribes."

^{20/} Act of August 7, 1789, 1 Stat. 49.

In 1834 Congress established under the Secretary of War a " * * Department of Indian Affairs" (4 Stat. 735 et seq.) Broad powers of administration were conferred on the President. Indian Agents and Superintendents were authorized.

Congress subsequently by an Act of 1849, placed Indian affairs under the Secretary of the Interior.^{21/} There the vast powers of the Executive Branch over the lives of American Indians reside.

a. Declaration of Trust relationship between the United States and the Indian people; its nature and standards of performance

There has been reviewed the basic Constitutional relationship between the United States and the Indian Nations. In describing that relationship the Supreme Court had this to say: "The condition of the Indians in relation to the United States is, perhaps, unlike that of any other two people in existence. In general, nations not owing a common allegiance, are foreign to each other. The term foreign nation is, with strict propriety, applicable by either to the other. But the relation of the Indians to the United States is marked by peculiar and cardinal distinctions which exist nowhere else." Chief Justice Marshall, continuing to speak for the Court, made this crucial declaration respecting the American Indians under the Constitution: "* * * their relation to the United States resembles that of a ward to his guardian."^{22/} (Emphasis supplied) More recently Mr. Justice Murphy, speaking for the Supreme Court, said:"* * * this Court has recognized the distinctive obligation of trust incumbent upon the Government in its dealings with these dependent and sometimes exploited people."^{23/}

^{21/} Cohan, Handbook of Federal Indian Law, page 102; See 5 U.S.C. 485; 25 U.S.C. 2.

^{22/} Cherokee Nation v. Georgia, 30 U.S. 1, 17 (1831).

^{23/} Seminole Nation v. United States, 316 U.S. 286 (1942).

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The Constitutional obligation here involved has also been referred to as "the generous and protective spirit which the United States properly feels towards its Indian wards."^{24/} In keeping with that platitude the Court has alluded to the "high standards for fair dealing required of the United States in controlling Indian affairs."^{25/}

Repeatedly the unique trust relationship of this Nation to the Indian people has been variously restated, applied and reaffirmed.

Standards of performance by a trustee are established by broad and uniformly applied principles. Most important here, the United States is required - but as will be reviewed, has failed - "* * * to take and keep control of the trust property."^{26/} Directed to the nature of the Federal obligation to protect the property of the Navajo Nation in New Mexico and Arizona, it has been authoritatively declared that "the most exacting fiduciary standards * * *" are applicable.^{27/}

In a Presidential Message to Congress condemning the failure of the Justice and Interior Departments to protect the Indian rights to the use of water, these explicit and legally sound terms are used: "The United States Government acts as a legal trustee for the land and water rights of American Indians."^{28/} For the Attorney General,

^{24/} Oklahoma Tax Commission v. United States, 319 U.S. 598, 607 (1943).

^{25/} United States v. Tillamooks, 329 U.S. 40, 47 (1946).

^{26/} American Law Institute, Restatement, Trusts, Section 174.

^{27/} Navajo Tribe of Indians v. United States, 364 F.2d 320, 322 (Ct. Cls. 1966).

^{28/} Cong. Rec. Senate, July 9, 1970, pp. 10894 et seq., Sec. 8, p. 10896.

Department of Justice, and the Secretary of the Interior, the President established these standards of performance on behalf of the American Indians, of those two Cabinet officials as the principal agents of the Trustee United States: "Every trustee has a legal obligation to advance the interests of the beneficiaries of the trust [a] without reservation and with the highest degree of [b] diligence and [c] skill.^{29/} At this juncture the establishment of the Indian - State relationship will be briefly summarized.

b. Inherent Indian Tribal sovereignty and the States

Brought to focus here is the relationship of the Indian Tribes with the several States as that relationship pertains to the life-sustaining Indian Winters Doctrine rights to the use of water. Reference has been made above to Worcester v. Georgia. At issue there was the power of the State of Georgia over the Cherokee Indian Nation. Marshall recognized the inherent powers of "The Indian nations" dating "from time immemorial" - the wellspring of Indian sovereignty.^{30/} The Indian Nations, he declared, were - they remain today - "distinct, independent, political communities." They retained, in the words of the Court, "their original natural rights" subject to what he described as the "irresistible power" of the European Nations which, in the ultimate "we the people" under the Constitution, delegated to the United States.

^{29/} Id.

^{30/} Worcester v. Georgia, 31 U.S. 350, 379 (6 Pet. 515, 559) (1832).

Subject to that "irresistible power", Marshall said this, establishing a most vital precedent: "The Cherokee Nation, then, is a distinct community occupying its own territory * * * in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the consent of the Cherokees themselves * * *."^{31/} Marshall then proclaimed, in these terms, the exclusive and plenary power of this Nation respecting Indians: "The whole intercourse between the United States and this [Cherokee] Nation, is by our constitution and laws vested in the government of the United States." Hence, said Marshall, Georgia's legislative acts purporting to be operative within the Cherokee Nation were a "nullity".^{32/}

Federal - State - Indian relationship was a prime issue before the Supreme Court in the case giving rise to the Winters Doctrine. The legal consequences, if any, were reviewed in connection with the laws of Montana and that State's admission into the Union upon the Indian rights to the use of water. Sequentially the dates were of great importance. The United States and the Indians had established their Reservation pursuant to an 1888 agreement which followed the original treaty. Montana entered the Union in 1889. Having rejected the contention that Montana's admittance into the Union affected the

^{31/} Ibid., at 380 (560).

^{32/} See, however, Williams v. Lee, 358 U.S. 217, 219 (1958) and cases citing or relying upon the principle of Williams v. Lee, which has been construed as in some manner limiting the quoted statements from Worcester v. Georgia; not, however, as it relates to interests in real property of the nature of rights to the use of water.

Indians' Winters Doctrine rights, the Court made this statement: "[The agreement was made May 1, 1888] it would be extreme to believe that within a year Congress destroyed the reservation and took from the Indians the consideration of their grant, leaving them a barren waste--took from them the means of continuing their old habits, yet did not leave them the power to change to new ones."^{33/} Noteworthy is the Court's recognition of the inviolability of the Indian Winters Doctrine rights under the circumstances and the essential nature of those rights for Indians' existence upon the "barren waste" which would remain if the Indians were deprived of their rights to water.

Arizona asserted to the Supreme Court that Indian Reservations created after the State's admission, were not entitled to Winters Doctrine rights. In denying the assertion, the Supreme Court said this to Arizona which cited extensive but inapplicable authority on the subject: "They [the authorities] do not determine the problem before us and cannot be accepted as limiting the broad powers of the United States to regulate navigable waters under the Commerce Clause and to regulate government lands under Art. IV, § 3, of the Constitution. We have no doubt about the power of the United States under these clauses to reserve water rights for its reservations and its property."^{34/}

^{33/} Winters v. United States, 207 U.S. 564, 577 (1908).

^{34/} Arizona v. California, 373 U.S. 546, 597-8 (1963).

Similar contentions by the State of Washington in another Winters Doctrine case were likewise summarily rejected: "It is too clear to require exposition that the state water right decree could have no effect upon the rights of the United States. Rights reserved by treaties such as this are not subject to appropriation under state law, nor has the state power to dispose of them. Federal Power Comm'n v. Oregon, 349 U.S. 435, 444." ^{35/}

Immunity of the sovereign Indian Nations from State control respecting the Winters Doctrine rights to the use of water is thus firmly established. Though extraneous to the immediate proposition here under review, it is worthy of emphasis that there is a duality of sovereigns - the vast powers of this Nation under the Supremacy Clause of the Constitution; ^{36/} and the ancient inherent sovereignty of the Indian Tribes and Nations as described by Chief Justice Marshall in Worcester v. Georgia, *supra*.

C H A P T E R I I

PLANNED DESTRUCTION OF WESTERN INDIAN CULTURE ^{37/}

Genocide of the American Indian as a Federal policy is reviewed in the 1972 Summer edition of "The Indian Historian." ^{38/}

^{35/} United States v. Ahtanum Irrigation District, 236 F.2d 321, 328 (CA9, 1956).

^{36/} Art. VI, s. 2: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made * * * under the Authority of the United States, shall be the supreme Law of the land, and the Judges in every State shall be bound thereby * * *."

^{37/} The officers of the Federal Government are charged with knowing the consequences of their acts.

^{38/} The Indian Historian, Vol. 5, No. 2, page 4. Address: 1451 Masonic Avenue, San Francisco, California, 94117.

Greatest care has been taken in the selection of the term "genocide". It means "the deliberate and systematic destruction of a racial, political or cultural group." Chronicled in "The Indian Historian" is the concerted effort to seize and take from the Western Indian people their life-sustaining Winters Doctrine rights to the use of water.

In the succeeding paragraphs that policy of seizure of Indian rights, without which they cannot survive, by the Interior and Justice Departments acting in concert, is summarized and the role of the principal agencies of the Federal Government briefly set forth.

I. The Secretary of the Interior:

Reference has been made to the Constitutional relationship among the United States, the Indian Tribes and Nations. Congress, as noted, has plenary and exclusive power respecting Indian affairs. Principal agent of the Executive Branch of the Federal Government in fulfilling the trust obligations to the American Indians is the Secretary of the Interior.^{39/} "Duties of Secretary. The Secretary of the Interior is charged with the supervision of public business relating to the following subjects and agencies: * * * (10) Indians." Greatest stress must be placed upon the disparate and conflicting obligations of that Cabinet Officer. Especially pertinent is this fact: Although Indian affairs is an intensely human relationship, the principal - indeed the vastly overriding - duties of the Secretary

39/ 43 U.S.C. 1457.

Exhibit No. 23—Continued

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pertain to natural resources. Those duties include: "(5) Bureau of Mines. (6) Bureau of Reclamation. * * * (8) Fish and Wildlife Services. * * * (11) National Park Service. (12) Petroleum conservation. (13) Public lands, including mines." ^{40/} All of those duties of the Secretary involve powerful bureaucracies directly and immediately concerned with Indian natural resources - more frequently than not they are in the process of seizing, have outright seized, or are applying to the Indians concepts which are manifestly antipodal to, Indian interests.

a. Commissioner of Indian Affairs ^{41/}

Congress has provided that: "For the purpose of facilitating and simplifying the administration of the laws governing Indian affairs, the Secretary of the Interior is authorized to delegate, from time to time, and to the extent and under such regulations as he deems proper, his powers and duties under said laws to the Commissioner of Indian Affairs * * *." Administration of Indian affairs by the Commissioner is subject to the "supervision and direction of the Secretary * * *." Noteworthy is the fact that the Secretary of the Interior in supervising and directing the Commissioner of the Bureau of Indian Affairs, is primarily obligated to represent powerful non-Indian affairs, particularly those of the Bureau of Reclamation. That phenomenon was recognized by the President in the above referred to Message when he said that within the Interior Department there are

^{40/} 43 U.S.C. 1457.

^{41/} 25 U.S.C. 1 a.

conflicts between the Indian and non-Indian agencies and that when a resolution must be made of those conflicts "there is considerable evidence that the Indians are the losers when such situations arise. * * * The credibility of the Federal government is damaged whenever it appears that such a conflict of interest exists."^{42/}

A factor implicit in the circumstance described by the President is that the Commissioner of the Bureau of Indian Affairs is - primarily an agent to effectuate Interior's predominant policy; not that of the American Indians. There can be no successful challenge to that legal and administrative conclusion.

In assessing the magnitude of the grave injustice and violation of the rights of the Indian people, these facts are important:

Indian Winters Doctrine rights to the use of water are private interests in real property the title to which is of the highest dignity.^{43/} Moreover, the Indian rights being private in nature, should not be confused with public rights.

Respecting that circumstance the President also said: "The Secretary of the Interior * * * must at the same time advance both the national interest in the use of land and water rights and the private interests of Indians in land which the government holds as trustee."^{44/}

^{42/} Cong. Rec. July 9, 1970, S. 10894 et seq., Sec. 8, S. 10896.

^{43/} North Dakota Law Review, Vol. 48, No. 4, Summer 1972, "Indian Water Rights In The Upper Missouri River Basin" page 618, et seq.

^{44/} Cong. Rec. July 9, 1970, S. 10894 et seq., Sec. 8, S. 10896.

Let this fact be emphasized: The whole shameful history of the seizure by the Reclamation Bureau of Indian rights to the use of water proves the Interior Department consistently has attacked and is now attacking, rather than purporting to represent the Indian interests.

b. Commissioner of the Bureau of Reclamation

History marks for the Western Indians several fateful and disastrous dates. In this consideration June 17, 1902, was and is ^{45/} catastrophic. On that date the Congress enacted the Reclamation law. Pursuant to that Act the Secretary of the Interior is authorized "to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying out * * * " the Reclamation Act. ^{46/} "Under the supervision and direction of the Secretary of the Interior, the reclamation of arid lands * * * shall be administered by a Commissioner of Reclamation who shall be appointed by the President." ^{47/}

Subsequently there will be detailed the consequences of the acts of the Secretary of the Interior by reason of that official's historic and present violation of the Indian Winters Doctrine rights to the use of water due to his construction, operation and maintenance of Reclamation projects. Antecedent to that review reference is required to an even more anomalous factor in planning of the extinction by the Interior Department of the Western Indian culture.

^{45/} 43 U.S.C. 371.

^{46/} 43 U.S.C. 373.

^{47/} 43 U.S.C. 373 a.

c. Solicitor

"Intolerable conflict of interests" within the Interior Department, as stated, is all-pervasive. That all-pervasive conflict of interest is epitomized by the status of the Solicitor in the Department of the Interior.

It is not a happenstance that the President said in substance that the Indians are the "losers" when the Secretary of the Interior is required to "resolve" unconscionable conflicts. Chief legal aide in purporting to "resolve" conflicts among the Indians and competing agencies is the Solicitor. Respecting the Solicitor, Congress has stated: "The legal work of the Department of the Interior shall be performed under the supervision and direction * * * " of that officer. ^{48/}

As would be expected - based on a quarter of a century of closest observation - the Solicitor's Office is primarily an advocate for the Bureau of Reclamation which dominates Interior policy. That is not surprising when cognizance is taken of the fact that the Reclamation Bureau is seizing Indian rights to the use of water - wherever they exist - for non-Indian projects and purposes throughout the arid and semiarid regions of the United States. Totally untenable circumstances are constantly before the Solicitor's Office. Allegedly the Solicitor represents the Bureau of Indian Affairs, the Bureau of Reclamation, Bureau of Fish and Wildlife, National Park Service, Bureau of Land Management, all of whom have conflicting interests with

48/ 43 U.S.C. 1454.

the Indian people. That the Solicitor consistently fails in the performance of his duties on behalf of the Indian people will be reviewed in detail. In the comments respecting individual cases this fact will be found unassailable: The Solicitor's Office actively participates in or is a party to the invasion of the Indian rights. Yet by law that officer is the lawyer for the Indian people.

48/
 II. "No self-respecting law firm would" occupy
the status of the Attorney General, Department of
Justice who simultaneously purports to represent
the Western Indians and their deadliest adversaries

It was the President speaking to Congress when the declaration was made that "No self-respecting law firm * * *" would purport to represent the Western Indians and the Federal agencies within the Interior Department which are the deadliest enemies of the Indians.^{49/} As the lawyer in all judicial proceedings for the Bureau of Reclamation and for the Indians, the Attorney General, Department of Justice, is in a totally amoral situation throughout Western United States. That official is also required to render opinions for the Secretary of the Interior in regard to those irreconcilable conflicts.^{50/} It is the Attorney General who accepts or rejects proposals within the Federal Government to institute litigation on behalf of Indians.

Dagger's edge of that conflict of interest is this fact:
 Frequently the Attorney General is defending against Indian claims

^{48/} Cong. Rec. Senate, July 9, 1970, pp. 10894 et seq., Sec. 8, p. 10896.

^{49/} Id.

^{50/} See respecting general powers of the Attorney General, 28 U.S.C. 512; at seq., 515 et seq.

for confiscation of their property in the Court of Claims or the Indian Claims Commission, and purporting simultaneously to represent the Indians involving precisely the same property, ^{51/} in other forums. Examples of the consequences which have befallen Western Indians due to the conflicts of the Attorney General against their interests will now be reviewed.

III Destruction of Western Indian culture by the Interior and Justice Departments acting in concert

a. Aggressive violation of Indian Winters Doctrine rights a long established Justice and Interior Department practice and policy

Virtually concurrent factors of transcendent importance to the Western Indians transpired with the advent of the twentieth century:

(1) Congress enacted the Reclamation Law in 1902; ^{52/} (2) The Indian Winters Doctrine was enunciated in the lower courts in 1906 and was affirmed by the Highest Court in 1908. ^{53/}

Seizure of Indian Winters Doctrine rights in furtherance of the non-Indian reclamation projects by the Secretary of the Interior immediately became the standard practice. Attacks against the Indian Winters Doctrine rights were launched by the Secretary of the Interior from the moment of its inception. Interior Department records are replete with denials that the Indian people are entitled to own rights to the use of water to meet their present and future water requirements. ^{54/}

^{51/} "Federal Encroachment on Indian Water Rights and the Impairment of Reservation Development" Vol. 2 of Joint Committee Print 1969, 91st Cong., 1st Sess.

^{52/} See above, Chapter II a and c, pages 14 and 17.

^{53/} See above "Introduction", pages 1 et seq.

^{54/} "Federal Encroachment on Indian Water Rights and the Impairment of Reservation Development", Vol. 2 of Joint Committee Print 1969, 91st Cong. 1st Sess., pages 495 et seq.

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A prime example of the conduct of the Secretary of the Interior in seizing Indian rights for Reclamation projects was reviewed by a Joint Committee of Congress in the year 1913. So shocking was that violation of the responsibility of the Secretary to the Yakima Indian people that Congress rejected the Secretary's amoral conduct. It passed an Act assuring the Indians an adequate water supply, guaranteeing them against seizure by the Reclamation ^{55/}Bureau.

In 1908 the Secretary of the Interior purported to give away 75% of the Yakima Indian rights in a stream bordering the Yakima Reservation. By a tortuous course of intentional avoidance of an attack upon the unconscionable 1908 agreement, the Interior and Justice Departments, unworthy of their status, thwarted repeated demands for an adjudication of the Indian Winters Doctrine rights there involved, for a period of forty (40) years. ^{56/} After seventeen (17) years of litigation it was finally resolved that the Secretary of the Interior did not convey away the Indian rights by the immoral attempt to rob the Yakimas of their rights by that officer. Restoration of the water supply to which the Yakima Indians were entitled has resulted in a vastly increased economic return to them. Yet this fact remains: Two generations of Indians were forced into poverty-stricken conditions due to the Secretary of the Interior's intentional

^{55/} Act of August 1, 1914, 38 Stat. 604; See Yakima River Decree, January 31, 1945.

^{56/} See reported history of that conduct recited in *United States v. Ahtanum Irrigation District*, 236 F.2d 321, 328 et seq. (CA9, 1956).

violation of the Indian Winters Doctrine rights. Correction in the two episodes of Secretarial venality respecting the American Indian people in the State of Washington is the exception, not the rule.

Cradle of the Indian Winters Doctrine was the Milk River in the State of Montana. ^{57/} Invasion by the Secretary of the Interior of the Indian Winters Doctrine rights in the Milk River, although those rights were declared by the Supreme Court, has intentionally virtually completed the destruction of the Milk River in its lower reaches. Through the construction of Reclamation projects and structures far beyond the water supply available, the Secretary of the Interior has gravely impaired or destroyed the water supply of Montana's Fort Peck Indian Reservation, its Blackfeet Indian Reservation, and grievously depleted the water supply at Fort Belknap. ^{58/} The Corps of Army Engineers has joined the Secretary of the Interior in the destruction of the water rights of the Indians in the Missouri River Basin. ^{59/} In the cited references the invasion or destruction of Indian rights in the Missouri River or its tributaries are chronicled as they pertain to the Reservations in Wyoming, Montana, North and South Dakota. ^{60/}

- b. Arizona's Indians grievously damaged by the Secretary of the Interior and the Attorney General; gravely threatened with ultimate annihilation by those Federal officials

^{61/}

Reference has been made to Arizona's ancient Indian heritage.

^{57/} See Introduction, pages 1 et seq.

^{58/} North Dakota Law Review, Vol. 48, No. 4, Summer 1972, "Indian Water Rights In The Upper Missouri River Basin", pages 633 et seq.

^{59/} Ibid., pp. 634 et seq.

^{60/} Ibid., pp. 634 et seq.

^{61/} Introduction, pages 1 et seq.

When the Spaniards entered the Gila and Salt River Valleys near the present city of Phoenix, they were astounded by the irrigation systems and the agricultural successes of the Indians in those valleys.^{62/} Engineering projects, sophisticated in design and marvels in their operation, evidenced a highly civilized culture.^{63/} That civilization so successful for the Indians as it related to projects and agriculture, has been destroyed by the Secretary of the Interior through acts and omissions to benefit the non-Indian communities which engulfed those Arizona Indians.

Proof of the shocking invasion, seizure and denial of the Indian rights to the use of water is the infamous Gila River Decree, stipulated to in person by the then Secretary of the Interior and the Attorney General.^{64/} "Immemorial" - and rights with invaluable early priorities - both the very essence of the Indian Winters Doctrine rights, are recognized, declared, adjudged - and, on the face of the Gila Decree, violated by the Secretary and the Attorney General.^{65/} Having stipulated the existence and measure of the Indian rights, those officials in the Gila Decree awarded them in a very large measure to non-Indians with inferior rights. In simplest terms, by Executive fiat, the Indians' rights were confiscated.

^{62/} "Federal Encroachment on Indian Water Rights and the Impairment of Reservation Development" Vol. 2 of Joint Committee Print 1969, 91st Cong. 1st Sess., pp. 467 et seq.

^{63/} Id.

^{64/} Globe Equity No. 59, In the District Court of the United States In and For the District of Arizona, The United States of America vs. Gila Valley Irrigation District, et al.; entered June 28, 1935.

^{65/} Gila River Decree, pages 14 et seq.; 105 et seq. The victims of this outrageous conduct are the Indians on the Gila River and San Carlos Indian Reservations.

. Subsequent seizure of the surface and ground water supply by non-Indians in violation of the decree in question, throughout the Gila River Valley epitomizes the policies and practices of the Secretary of the Interior which are now destroying one of the most ancient Indian cultures based upon irrigation.

Aggressive attacks by the Interior Department to strike down the Winters Doctrine rights of the Indian Tribes and Nations in Northwestern United States, have been briefly alluded to above. That aggression against the Indians coincided with the passage in 1902 of the Reclamation Law.^{66/} Precisely the same Interior Department policies are adhered to in Southwestern United States.

Immediately following the date last mentioned - on March 14, 1903 - the Secretary of the Interior authorized the Salt River Federal Reclamation Project in and around Phoenix. Concomitantly with the progress of that project, the Chief Engineer of the Bureau of Indian Affairs undertook an investigation of the rights to the use of water of the Salt River and Camp McDowell Indian Reservations. It was the same official acting under the direction of the Secretary of the Interior, who attempted - but failed - to confiscate in 1908, 75% of the waters of a principal stream bordering the Yakima Indian Reservation.^{67/}

Magnitude of the historic assaults by the Interior Department upon the vested rights to the use of water of the Indians to

^{66/} See above, pages 16 and 19.

^{67/} See above, page 20.

meet their present and future water requirements is demonstrated by the loss of the Salt River and Camp McDowell Indians by the ensuing events. In the Bureau of Indian Affairs report no mention was made to present or future water requirements. Rather the meager quantities of water used in the early 1900's is all that was reported for the Reservations in question. Causal sequences are unclear. Both the Interior and Justice Department files are stripped of information. Yet these facts are a matter of court record:

The Kent Decree was entered March 1, 1910.^{68/} In that decree Winters Doctrine rights were intentionally violated, depriving the Salt River Indians of rights to the use of water to meet future water requirements. That decree was drastically limited to lands which had been receiving water for a period of 20 years.^{69/} Due to that diversion - not the Winters Doctrine - the land, said the Court, "has acquired a prior right." Though the Salt River Indians, had they been justly and honestly represented by the Interior and Justice Department lawyers, were entitled to rights for literally thousands of acres of invaluable land which remains today barren and unproductive due to the culpability of the lawyers purporting to represent the Indians. Years of poverty and destitution for many Salt River Indians has been the consequence of that culpability of Federal officials.

^{68/} In the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa, Patrick T. Hurley, plaintiff, The United States of America, Intervenor, against Charles F. Abbott and Four Thousand Eight Hundred Others, Defendants. No. 4564.

^{69/} *Ibid.*, page 19.

In vague and obscure terms the Camp McDowell Tribe was likewise unconscionably limited by the Kent Decree to water for lands previously irrigated in intentional contravention of their Winters Doctrine rights.^{70/} Underscored here is the intentional nature of the acts of Federal officials who prepared the Kent Decree which was entered in 1910 with full knowledge of the Winters Doctrine that had been affirmed by the Supreme Court in 1908.^{71/} That the Interior and Justice Department officials had knowledge of the consequences of their course of conduct is substantiated by this fact:^{72/} They were the same persons who attempted to rob the Yakimas in 1908.

Subsequently there will be reviewed the present course of conduct of the Interior and Justice Department officials. Involved are virtually identical factual situations which gave rise to the infamous Gila and Kent Decrees. Comments will likewise be directed to the Fort Apache Reservation in the upper reaches of the Salt River Valley in Arizona and to other central and southern Reservations in that State. Separate comment will likewise subsequently be made respecting the devastation and threats of devastation of the Arizona-California Indian Reservations abutting upon or traversing the Lower Colorado River. Entailed there are issues inextricably interrelated with the general and specific plans of the Interior Department now well advanced to seize and take from Western Indians their rights to the use of water without which they cannot survive as viable political and ethnic communities.

^{70/} Ibid., page 20.

^{71/} See above, Introduction, page 1.

^{72/} See above, page 20, footnote 56.

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- c. New Mexico's Indians victims irreparably damaged by the seizure and restrictions imposed upon their life-sustaining Winters Doctrine rights to the use of water by the Secretary of the Interior

Astride the Continental Divide in north central New Mexico is the Jicarilla Apache Indian Reservation. Sole viable stream of any magnitude within that high and arid Reservation is the Navajo River, a major tributary of the San Juan River, a principal affluent of the Colorado River. Destroy the Navajo River or seriously deplete the flow of that stream and the future of the Jicarilla Apache Reservation is irreparably and irreversibly damaged.

In total disregard of the Indian life-sustaining aspects of the Navajo River, the Secretary of the Interior has constructed a transmountain tunnel through the Continental Divide. That tunnel is a major component of the San Juan-Chama Federal Reclamation Project.^{73/} By means of that conduit the Secretary of the Interior will, if not restrained, export away from the arid Jicarilla Apache Reservation a vast proportion of the Navajo River. Magnitude of the crime against those Indian people is the drastic shortage of water not only in the stream in question but in the entire Colorado River drainage and particularly the San Juan River sub-drainage of which the Navajo River is a vital part.

^{73/} See Reclamation Project Data, Supplement pp. 199 et seq. San Juan-Chama Project was authorized as a participating project of the Colorado River Storage Project by Public Law 87-483, June 13, 1962 (76 Stat. 96) (43 U.S.C. 620 et seq.).

Immediate and drastic consequences befell the Jicarilla Apache Reservation when the Secretary of the Interior - in clear violation of his trust obligation to the Apaches - seized the waters of the Navajo River for exportation transmountain. That stream was flowing a substantial 500 cubic feet of water per second (cfs). Literally overnight the Secretary of the Interior through his agents reduced it to 50 cfs. Up to that Secretarial seizure, fishing in the Navajo River was an important source of income on the Reservation. All of the fish which had abounded in the stream, were killed by the environmental debacle brought about by the principal agent of the Trustee.

It is impossible to perceive a better defined or spectacularly disastrous consequence of the intolerable conflict of interest within the Interior Department. One agency - the Bureau of Reclamation - under the direction of the Secretary destroys an Indian river and all its fish life in furtherance of a non-Indian project.

Gravest threat to the economic future of the Navajo Nation in Arizona - New Mexico, confronts the Navajo people. Federal reclamation projects above and below that vast area imperil its survival. Bordered to the north for miles by the San Juan River, the Navajo Nation must look to that river as a life-line. Long before the Secretary of the Interior had completed the tunnel which brought havoc to the Jicarilla Apache Reservation, the entire Colorado River of which the San Juan River is a part, had been many times

^{74/} over-appropriated. Divert from the San Juan River virtually the entire flow of the Navajo and other tributary streams, and the impact upon the Navajo Nation will be catastrophic.

Fiscal strangulation by the Interior Department has been practiced against the Navajos in regard to the San Juan-Chama Project.^{75/} That non-Indian project has been completed with the shameful delay and procrastination by the Interior Department precluding the completion of the Navajo Indian Irrigation Project which is reliant solely upon the waters of the San Juan drainage. To be tested is whether, due to the dilatory practices of the Secretary of the Interior, there will be available water to supply the Navajo Irrigation Project. There is presented that question although throughout Congress provided assurances of 508,000 acre-feet of water to be used for it.^{76/}

An intensive study within the San Juan River drainage by the American Indian Historical Society, largely financed by private funds, is now well advanced. Objective of that study:

Has the Secretary of the Interior seized for Federal Reclamation Projects the waters of the San Juan River and its tributaries to a degree that will

- (1) Forever stint and limit the future hopes of the Jicarilla Apaches for economic

^{74/} "A Preface to Disaster for the American Indian People" - Conflicts of Interest in Proceedings Before the Supreme Court of the United States - Eagle River Adjudication and Water Division No. 5 Adjudication, March 23, 1971.

^{75/} 43 U.S.C. 620 et seq.; Public Law 67-483, 87th Cong., June 13, 1962.

^{76/} Ibid., Sec. 2.

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development with the ultimate consequence of destroying their ancient culture and heritage?

- (2) Render the Navajo Indian Irrigation Project a cruel hoax perpetrated upon the Navajo people by reason of the commitment to the exportation by means of the San Juan-Chama Federal Reclamation Project of water from the principal sources of the San Juan River?^{77/}

At this juncture in advance of the final report on the study of the American Indian Historical Society, there is sufficient data available to sustain the conclusion that the Secretary of the Interior has indeed - unless that officer is restrained - forced affirmative answers to (1) and (2) immediately above.

- d. Destruction of the ancient Pueblo culture by the Secretary of the Interior^{78/}

When the Pueblo Indians first occupied the Rio Grande Valley of the Rio Grande and its tributaries is unknown. It is ironic that Interior's Reclamation Bureau which will, if it is not restrained, destroy the Pueblo culture, has this to say respecting that ancient

^{77/} See above, pages 26 et seq.

^{78/} From the tributaries of the Rio Grande southward down its main stem to below the present City of Albuquerque, New Mexico, are these Pueblo Indian Nations, all of which are dependent upon those sources of water for their survival: Taos, Picuris, San Juan, Santa Clara, Nambé, Pojoaque, Tesuque, San Ildefonso, Cochiti, Santo Domingo, San Felipe, Jemez, Zia, Santa Ana, Sandia, Isleta, Laguna and Acoma.

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but gravely imperiled civilization: "* * * the Rio Grande Valley is the oldest continuously occupied area in the United States * * * . The first Spanish exploration into the area was made in 1540 by Coronado in search of the "Seven Cities of Cibola. Colonization [European] was started in 1598 * * * ." ^{79/}

(1) Judicial vacillation respecting the status of Pueblo Indian Nations

It will be recalled, as reviewed above, that the Commerce Clause of the Constitution vested in the Government of the United States the exclusive and plenary power in regard to Indian affairs. ^{80/} Stemming from that source is the unique Trustee relationship among this Nation, the Indian Tribes and Nations. Ambivalence has frequently rendered that relationship a mockery. Nevertheless as Trustee the United States has shielded the American Indians from non-Indian "depredations" prior to the time of President George Washington. ^{81/}

Judicial quirks together with executive whims and arrogantly stupid unilateral decisions have frequently brought disastrous consequences to Indian people. ^{82/} It was a judicial quirk - well interspersed with continuing executive stupidity - that brought disaster to the Pueblo civilization. By an 1864 Territorial decision it was declared Federal statutes relating to Indians were without application to the Pueblos. ^{83/} That error was arrived at by an exhaustive

^{79/} Reclamation Project Data (Supplement), pages 199-200.

^{80/} Supra, page 6 et seq., footnote 19.

^{81/} "Federal Encroachment on Indian Water Rights and the Impairment of Reservation Development" Vol. 2 of Joint Committee Print 1969, 91st Cong. 1st Sess., page 486, footnote 94, et seq.

^{82/} Ibid., at pages 478, 479.

^{83/} United States v. Lucero, 1 N.M. 422 (1869).

review of the magnificent heritage of the Pueblos giving rise to their highly civilized status by any standards. In 1876 the Supreme Court in the Joseph Decision^{84/} adopted the concepts of the Territorial decision holding the Pueblos were not Indian people within the purview of the law there involved. Magnitude of the loss to the Pueblos by the Joseph Decision has been summarized.^{85/} Four decades were to elapse prior to the reversal of Joseph. In 1913 the Highest Court by its Sandoval Decision^{86/} declared its early opinion was in error based upon "inaccurate information".

One of the tragic consequences of the failure to extend to the Pueblos the Constitutional mantle of the Trust relationship was the occupancy by non-Indians, by trespass and otherwise, upon the lands within the Pueblos, the title to which had been recognized by Spain, Mexico and the United States which had overruen the Rio Grande Valley in the order mentioned.

Congressional correction of the failure to protect the Pueblos from trespass and to preserve their ancient jurisdiction was accomplished. Executive substantial non-compliance with the law by the Secretary of the Interior and the Attorney General thwarted Congressional will. Reference is now made to that failure.

- (2) Violation of Congressional will by the Secretary of the Interior and Attorney General to define, protect and preserve the Pueblo rights to the use of water 87/

Trespass upon the lands of the Pueblo Indians due to the

84/ United States v. Joseph, 94 U.S. 614 (1870).

85/ Federal Indian Law, Department of the Interior, pages 901 et seq.

86/ United States v. Sandoval, 231 U.S. 28, 48 (1913); Federal Indian Law, Department of the Interior, page 901.

87/ Pueblo Land Board Act, Act of June 7, 1924 (43 Stat. 636, Ch. 331).

failure of the United States to function as a Trustee was in part at least the result of the Joseph Decision.^{88/} Congress in the year 1924, adopted the Pueblo Land Board Act to rectify to some degree the damage that had transpired due to the hiatus created by the decision last mentioned.^{89/} Composition of that Board is crucial in understanding its non-compliance with the Congressional mandate directed to it. That Board, declared Congress, shall " * * * consist of [1] the Secretary of the Interior, [2] the Attorney General * * * and a third member to be appointed by the President of the United States."^{90/} Manner in which corrective judicial action was to be taken is pertinent. Congress declared, " * * * the United States of America, in its sovereign capacity as guardian of said Pueblo Indians shall, by its Attorney General, * * *" bring suits on behalf of the Pueblos, which actions would be in the nature of proceedings to quiet their titles. Congress also declared the Secretary of the Interior and the Attorney General, together with the other member of the Pueblo Land Board shall separately report "The area and character of any tract or tracts of land * * * and the extent, source, and character of any water right^{91/} appurtenant thereto in possession of any non-Indian claimants * * *." (Emphasis supplied) It was likewise the obligation of the Secretary of the Interior and the Attorney General to determine whether timely

^{88/} See page 31.

^{89/} Footnote 87, Pueblo Land Board Act, June 7, 1924 (43 Stat. 636, Ch.331).

^{90/} Ibid., Sec. 2.

^{91/} Ibid., Sec. 6 (a).

action on behalf of the Pueblos could have recovered the Pueblo "land and water rights."^{92/} To the extent the land and "water rights" of the Pueblos were lost by trespass or other means, to non-Indians, the Pueblos were entitled to compensation by the United States.^{93/}

Aggressive attacks^{94/} by the Secretary of the Interior and the Attorney General acting in concert, upon the Indian Winters Doctrine rights to the use of water held in trust for the Indians have been reviewed in detail. Violations by those officers of the Pueblo Land Board Act exemplifies intentional non-performance which is equally destructive of Indian rights.

There was a failure by the Secretary of the Interior and the Attorney General to conform with the explicit will of Congress. Those officers did not achieve the basic objective of Congress respecting the Pueblo rights to the use of water. Rather, vagaries and inconsistencies pervade the Board's reports. An intensive review of every phase of those proceedings fully support that conclusion. Positive proof respecting historic and present methods of distributing the water available to the Pueblos further sustains the charge of intentional and continued violation of the Act in question, by the Secretary of the Interior and his subordinates.^{95/} Irreparable damage to the Pueblos resulting in poverty-stricken

^{92/} Ibid., Sec. 6 (b).

^{93/} Ibid., Sec. 6 (c).

^{94/} See above, pages 19 et seq.

^{95/} Based on extensive interviews and investigations with Charles P. Corke, Deputy Economic Director, Bureau of Indian Affairs, Department of the Interior, long-time supervisor respecting the distribution of Pueblo water.

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conditions stems from the failure to protect the Pueblo rights to the use of water to which they are legally entitled to meet their present and future water requirements.^{96/}

It is reiterated that the Secretary of the Interior and the Attorney General failed to perform on behalf of the United States as the principal agents of " * * the United States of America" acting "in its sovereign capacity as guardian of the said Pueblo Indians * * *"^{97/}

Intentional concerted aggressive violation by the Secretary of the Interior and the Attorney General of the Indian Winters Doctrine rights, as stated, is a long-term well established practice.

- (3) Violation of "prior and paramount" Pueblo rights to the use of water by the Secretary of the Interior - part of an unvarying pattern in Western United States

Concurrent with - undoubtedly a part of - the refusal to protect the Pueblo "water rights" by the Attorney General and the Secretary of the Interior, pursuant to the Pueblo Land Board Act, plans for another violation of the rights of six Pueblos were completed. It was and is equally disastrous to the Pueblos' basic Winters Doctrine rights for their present and future water requirements.

^{96/} See in that connection memorandum to the Commissioner of Indian Affairs, dated October 31, 1969, entitled "Memorandum respecting rights to the use of water of the Pueblo Indians of New Mexico in the Rio Grande and its tributaries - Acoma, Cochiti, Isleta, Jemez, Laguna, Nambe, Picuris, Pojoaque, Sandia, San Felipe, San Juan, San Ildefonso, Santa Ana, Santa Clara, Santo Domingo, Taos, Tesuque, and Zia." See also memorandum dated April 17, 1970, from Commissioner of Indian Affairs to the Solicitor of the Department of the Interior through the Assistant Secretary of the Department of the Interior.

^{97/} See d (1) et seq. above.

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Reference in regard to the second interrelated denial of Pueblo rights to the use of water for their present and future requirements is the 1928 Middle Rio Grande Conservancy District Act.^{98/} Pursuant to that Act a contract dated December 14, 1929, was entered into between the Secretary of the Interior and the last mentioned Conservancy District. In the language of Congress the "prior and paramount" Pueblo rights to the use of water in the Rio Grande would be guaranteed for approximately 8,300 irrigated acres.^{99/}

In addition to the Congressionally guaranteed "prior and paramount" rights of the named main-stream Pueblos, provision is made by Congress for the irrigation of additional large acreages of Pueblo lands. Congress, in regard to those additional Pueblo lands said this: "* * * the water rights for the newly reclaimed lands shall be recognized as equal to those of like [Conservancy] district lands * * *."^{100/} Cognizant of the losses to Indians through the seizure of their rights to the use of water, Congress provided this language in an endeavor to assure the Pueblo rights: Respecting the Pueblo "prior and paramount" rights they "shall be recognized and protected" by the Secretary in the contract alluded to above; respecting the Pueblo lands without

^{98/} Act of February 14, 1927 (44 Stat. 1098); Act of March 18, 1928 (45 Stat. 312, 313).

^{99/} Small portions of the total acreage of some but not all of the main-stream Pueblos are within the Conservancy District. They are: "Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia, and Isleta" (44 Stat. 1098; 45 Stat. 312, 313).

^{100/} 45 Stat. 313.

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the Congressionally declared "prior and paramount" rights, they are to "be protected from discrimination in the diversion and use of water, and such water rights, old as well as new, shall not be subject to loss by nonuse or abandonment thereof."^{101/}

In keeping with the historic pattern throughout Western United States, the Secretary of the Interior has failed to protect the Pueblo rights to the use of water within the Middle Rio Grande Conservancy District. There is included in that Secretarial course of conduct, but not necessarily limited to:

Failure adequately to provide for the exercise and enjoyment by the Pueblos of their "prior and paramount" rights;

Continued sharply declining irrigated acreage;

Failure to provide systems for irrigation of thousands of acres of irrigable land provided for in the Middle Rio Grande Conservancy District;

Failure to provide irrigation systems for additional tens of thousands of acres of irrigable lands entitled to the "prior and paramount" Pueblo Winters Doctrine rights to the use of water, situated within the Pueblos but outside of the service areas within the Middle Rio Grande Conservancy District;

^{101/} 45 Stat. 313; See also paragraphs 1 and 2 of Agreement dated December 14, 1929, between the Secretary of the Interior and Middle Rio Grande Conservancy District.

Failure to provide irrigation systems for the San Ildefonso, Santa Clara and other Pueblos having main-stream Winters Doctrine rights to the use of water, but which are outside of the Middle Rio Grande Conservancy District.

Aggressive action by the Bureau of Reclamation against the San Felipe, Santo Domingo and other Pueblos, by trespass upon their lands and the threat of further additional trespasses, is all part of the violations of the Pueblo basic rights along the main stream of the Rio Grande.

Consequences of Secretarial dereliction and aggressive acts in regard to the main-stream Pueblos:

Poverty, limited education, relief programs, stunted irrigation development for the present; ultimate destruction of the Pueblos in the foreseeable future as their invaluable rights are gravely eroded or violated by agents of the Trustee United States. Presented is the planned extinction of the oldest continuous culture on the North American Continent.

(4) Threat to main-stream Pueblos by the San Juan-Chama Federal Reclamation Project 102/

Trenching upon; outright invasion of the Pueblo rights to the use of water in the main stream has had this consequence:

102/ See above page 26, footnote 73.

Though the Pueblos are legally entitled, pursuant to the Winters Doctrine,^{103/} to rights to the use of water sufficient to meet their present and future water requirements, irrigation systems have never been provided by the Secretary of the Interior pursuant to which those rights could be exercised except for most limited areas both along the main stream of the Rio Grande and its tributaries.

Today the flow of the Rio Grande and of its tributaries has been so gravely depleted by non-Indian uses that the claimed rights to the use of water adverse to the Pueblos in that stream far exceed the available water supply. That short supply of water constitutes one of the gravest threats to the continued existence of these ancient Pueblos as viable communities in perpetuity.

Refusal by the Secretary of the Interior for over twenty (20) years - based upon personal knowledge - to (1) inventory and (2) adjudicate the main-stream Pueblo rights, may well be judged as an integral part of the Secretary of the Interior's planned sharp limitation of the rights of those Pueblos. Confronting the Pueblos is probably the final coup. Involved is the seizure by the Secretary of the Interior of the waters of the Navajo River required by the Jicarilla Indian Reservation^{104/} and the importation of it into the over-appropriated and seriously diminished water supply comprising the meager natural flow of the Rio Grande.^{105/} That water exported away from the

^{103/} Introduction, pages 1 et seq.

^{104/} See above, pages 26 et seq.

^{105/} Id.

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Jicarilla Indian Reservation is to be released into the Rio Grande and a vast proportion of it used under contract with the non-Indian communities. Some meager share of it may be available to the six Pueblos within the Middle Rio Grande Conservancy District. ^{106/} Yet with that meager exception, this fact is confronting the main-stream Pueblos: Hydrologically speaking, they will never be permitted to increase their present uses either from the surface or the ground waters of the Rio Grande, without bitter, protracted litigation. To increase those present uses would necessarily involve an interference with the delivery of the imported water - a circumstance that the aggressive and avid non-Indian community would never tolerate. As the main-stream Pueblos have been consistently denied their day in court, all as will be reviewed, their prospect of obtaining their day in court after a non-Indian community has been receiving the imported Jicarilla water will be nil.

(5) Denial of the San Felipe and Santo Domingo Pueblos of their day in court

Intolerable conflicts of interest within the Interior and Justice Departments have been reviewed and documented. ^{107/} Those conflicts of interest have contributed to and are now precluding a main-stream adjudication of rights in the Rio Grande including those of the Pueblos. ^{108/} A primary example of the conflicts of interest within the Justice and Interior Departments is presented by pending

^{106/} See above, pages 35 et seq. - Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia, and Isleta.

^{107/} See above, pages 14-15 et seq.

^{108/} The need for that type of adjudication was first reviewed in person in connection with the then pending case of Texas v. New Mexico in the Supreme Court in which the United States did not join as a party.

litigation. In furtherance of the San Juan-Chama Federal Reclamation Project alluded to above, there have been initiated five cases involving tributary streams of the Rio Grande. Included are rights of some of the Pueblos on some of the tributaries. ^{109/}

Vigorous opposition by the State of New Mexico and the Justice Department has been interposed to motions of the San Felipe and Santo Domingo Pueblos to intervene in those pending cases involving the tributaries. ^{110/} Requests by some of the main-stream Pueblos for assistance in connection with those tributary cases were summarily denied by the Interior Department. After four years of refusal to assist those main-stream Pueblos in their efforts to protect themselves, the San Felipe and Santo Domingo Pueblos filed their own motion to intervene. ^{111/} That motion - delayed for years by the Interior Department's refusal to allow preparation - was denied. There is now pending before the Court of Appeals for the Tenth Circuit a request to appeal the denial of the petitioning Pueblos to be heard. ^{112/}

Failure of the Justice and Interior Departments properly to present the issues involving Pueblo rights is analyzed in detail in both the petition to intervene and in a comprehensive memorandum from the Commissioner of the Bureau of Indian Affairs to the Solicitor of the Interior Department transmitted through the Assistant Secretary of the Interior. ^{113/}

^{109/} See above, pages 26 et seq.

^{110/} United States v. Aamodt, et al., and related cases in the United States District Court for the District of New Mexico.

^{111/} For full review see Motion to Intervene in the case of United States v. Aamodt and related cases; record; testimony.

^{112/} Again the course of conduct of the Interior and Justice Departments presents the tragedy of their conflicting obligations - the Reclamation Bureau adversary of the Pueblos.

^{113/} Memorandum dated April 17, 1970.

Thus an election has been made by the Interior and Justice Departments to support the San Juan-Chama Federal Reclamation Project against the main-stream Pueblos. That election is equally applicable to the Pueblos involved on the tributaries. There are these vital aspects to the disastrous consequences to the Pueblos involved in the cases on the tributaries initiated in furtherance of the San Juan-Chama Federal Reclamation Project, exemplifying the conflicts of interest within the Justice Department:

1. Plans for the units of the San Juan-Chama Federal Reclamation Project are based upon present uses, rejecting the present and future water requirements of the Pueblos; present Pueblo uses are far below their legal entitlements; ^{114/}
2. Failure of the Secretary of the Interior and the Attorney General to comply with the Pueblo Land Board Act results in the presentation of the cases in total disregard of the strict limitations of the Pueblo Land Board Act; ^{115/}
3. Failure of the Justice Department to comply with Federal Rules of Civil Procedure requiring answers of each defendant; failure to require assertion and proof of non-Indian claims; failure to cross-examine

^{114/} Plans for the Pojoaque Unit of the San Juan-Chama Federal Reclamation Project.

^{115/} See record of Motion and related documents respecting intervention of San Felipe and Santo Domingo Pueblos.

or otherwise adequately to represent Pueblos involved, with irreparable damage to the Pueblos by that failure and by reason of the precedent which 116/ must necessarily emerge from the cases in question.

There has been reviewed a broad general pattern pursued throughout Western United States, of seizure of the life-sustaining Indian rights to the use of water by the Secretary of the Interior, frequently acting in concert with the Attorney General. Special reference has been made to the violent consequences of that seizure upon the present and future of the Indian culture in the States of Arizona and New Mexico. This review has been on the background of the President's castigation of the conduct of the Interior and Justice 117/ Departments.

Projecting that pattern of seizure of Indian rights to the use of water - with the ultimate destruction of Indian Tribes and Nations - by the Secretary of the Interior and his principal attorney, the Attorney General, is the present attack by those principal agents of the United States Trustee upon the Indian Winters Doctrine rights. In the last decade that attack has been accentuated, stemming primarily from the Federal Bureaucracy which can survive only by the construction of Reclamation Projects the consequences of which are not only destroying Indian people but creating ecological debacles devastating 118/ to the Nation as a whole.

116/ Id.

117/ See supra, pages 8 et seq.

118/ "Federal Encroachment on Indian Water Rights and the Impairment of Reservation Development" Vol. 2 of Joint Committee Print 1969, 91st Cong., 1st Sess.

C H A P T E R I I IATTACKS UPON THE AMERICAN INDIAN WINTERS
DOCTRINE RIGHTS BY THE INTERIOR AND JUSTICE
DEPARTMENTS BEFORE THE SUPREME COURTa. Bigotry gives rise to law imposed upon American
Indians

Cruel, bigoted and archaic concepts of existing law are imposed upon the American Indians. History of those biased concepts needs brief reference properly to evaluate the consequences of the Justice Department's denial of Indian Winters Doctrine rights before the Supreme Court. ^{119/} Shortly after the European Nations "discovered" the North American Continent they were vigorously contesting each other for that vast land mass. They ignored the fact that it was occupied by the Indian Nations. Because those European potentates considered the American Indians "infidels" they decided to deny them the basic principles of the then recognized "Law of Nations". ^{120/} For example, those non-infidels decided that title to the lands occupied and vigorously defended by the Indians did not reside in them. Rather, the sole interest the Indians held in the lands occupied by them from time immemorial was only possessory in character.

Consequences of that bigoted concept is now and has been disastrous to American Indians. It gave rise to the term "Indian title"

^{119/} See attachment entitled "Attacks Upon American Indians' Winters Doctrine Rights By Justice And Interior Departments Before The Supreme Court October 12, 1972" analyzing the Motion before the Supreme Court to file Petition involving Pyramid Lake, United States v. California and Nevada, No. 59, 1972 Term.

^{120/} Johnson v. McIntosh, 21 U.S. 543 (1823); See in particular pages 572 et seq.

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a word of "art" in Anglo-Saxon law. "Indian title" is a precept demeaning to both the Indians and those who rigidly employ it against the Indians to seize their property. In recently applying that biased principle against the Indians the Highest Court had this to say:

"II Indian Title. * * * It is well settled * * * the tribes * * * held claim to * * * lands after the coming of the white man, * * * under what is sometimes termed Indian title or permission from the whites ^{121/} to occupy" their ancient homelands.

^{122/} Vital to the Jicarillas, Navajos and many other Indian Nations and Tribes is this principle declared by the Supreme Court - based upon the tenets reviewed immediately above: "An Indian reservation created by Executive Order of the President conveys no right of use or occupancy to the beneficiaries beyond the pleasure of Congress or the President. Such rights may be terminated by the unilateral action of the United States * * *." ^{123/}

Grave peril to Western Indians on Executive Order Reservations is contained in this language from the last cited case: "Indeed the United States affirms in its brief that Karluk Reservation is merely a reservation 'for a particular governmental use', not a disposal of the area." ^{124/} In the paragraphs which follow the denial

^{121/} Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 279 (1954).

^{122/} Though the Navajo Treaty was entered into, large areas of the Navajo Nation Reservation stem from Executive Orders.

^{123/} Hynes v. Grimes Packing Co., 337 U.S. 86, 103 (1948).

^{124/} Id.

of Indian Winters Doctrine rights, and assertion that title to them resides in the United States will be reviewed in some detail. As stated, the last quoted excerpt expresses the Justice Department's views that Indian rights are "a governmental use" not Indian rights held in trust for them by the United States. Methods adopted to achieve that end entail legal "interpretations" which shock the conscience. ^{125/}

- b. Denial by Justice Department of Indian Winters Doctrine rights before the Supreme Court; assertion of those rights as residing in United States but not in trust for the Indians

(1) Eagle River Decision

Presaging the outright denial by the Justice Department of the Indian Winters Doctrine rights to the use of water; asserting that the Indian rights are "federal rights" title to which resides in the United States are briefs filed by the Justice Department in the Eagle River Case. ^{126/} Shocking history of the course of conduct of the Justice Department was the subject of testimony by noted Indian lawyer Raymond C. Simpson before a subcommittee of the Senate Judiciary Committee. That aspect of the matter is beyond the scope of this review. ^{127/} It nevertheless forewarned Indian people of the Justice Department's attack upon their rights.

To the Supreme Court in the Eagle River Case the Justice Department relying primarily upon the Winters Decision, said this:

^{125/} See attachment, page 21.

^{126/} United States v. County of Eagle, 401 U.S. 520 (1971).

^{127/} See Hearings October 21 and 22, 1971.

"The water rights of the United States based on federal law consist primarily of reserved rights. Reserved rights entitle the United States to use as much water from sources on lands withdrawn from the public domain as is necessary to fulfill the purposes for which the lands were withdrawn, with a priority as of the date of withdrawal, subject only to water rights vested as of that date."^{128/} (Emphasis supplied) That assertion that it is the United States in which resides title to the Indian Winters Doctrine rights to the use of water is repeated throughout all phases of the Justice Department's presentation in the Eagle River Case.^{129/} Equally clear is that the United States affirmatively denies that the title is in the Indians held in trust for them by the United States.

- c. Denial by both Interior and Justice Departments of Indian Winters Doctrine rights in the destruction of Pyramid Lake. ^{130/}

As foreshadowed by the Justice Department's conduct in the Eagle River Case, the ultimate coup to Indian Winters Doctrine rights to the use of water on Executive Order Reservations - perhaps all others - is being attempted by the Justice Department before the ^{131/} Supreme Court. There the Justice Department refers to the establishment by an Executive Order related back to 1859, of the Pyramid Lake Indian Reservation which embraces all of Pyramid Lake and a

^{128/} "A Preface to Disaster for the American Indian People" - Conflicts of Interest in Proceedings Before the Supreme Court of the United States - Eagle River Adjudication and Water Division No. 5 Adjudication, March 23, 1971.

^{129/} Id.

^{130/} See Attachment, pages 9, 10 et seq.

^{131/} See supra, footnote 119; See Recommendations II, infra page 57.

substantial reach of the Truckee River, in the northwestern portion of the State of Nevada. Predominant aspect of the case is the intolerable conflict of interest of the Justice Department. Purportedly the United States is representing Interior Department's Bureau of Reclamation, Bureau of Sports Fishery and Wildlife, and the Pyramid Lake Tribe. The first two Interior Department claims are inextricably in conflict with the Indian rights.

It was that circumstance which gave rise to the President's castigation of the Justice Department in these terms: "No self-respecting law firm would" allow itself to represent conflicting claims. ^{132/} In that unfitting posture the Justice Department presents itself to the Highest Court in the Pyramid Lake Case.

Throughout the attachment to this consideration there is reviewed in detail the nature of and the devious methods pursued in the attack upon the Winters Doctrine rights of the Pyramid Lake Tribe to maintain Pyramid Lake and to restore the historic and invaluable fisheries. There fully documented there is reviewed:

1. The United States repeatedly asserts that the title to rights of the Pyramid Lake Tribe resides in the United States, not in the Tribe; ^{133/}
2. At no time does the United States assert - indeed, it tacitly denies - that the Pyramid Lake Tribe has title

^{132/} See supra, pages 18 et seq.

^{133/} Attachment, pages 9 et seq.; See RECOMMENDATIONS II, infra, p. 57.

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to the rights held in trust for them by the United States;

3. There is an intentional misrepresentation of the main thrust of the Winters Decision. In that case the Supreme Court recognized the Indians "reserved" to themselves the right to the use of water. Yet the Justice Department represents that it was the United States which reserved the rights. A misstatement of the case having far-reaching legal implications, namely, the United States is free to use the Indian rights for any "federal purpose" Indian or otherwise.^{134/}

A firm Interior Department policy of seizure of Indian rights to the use of water for Federal non-Indian projects and uses has been reviewed. Concerted aggressive action by the Interior and Justice Departments proceeding in concert, has likewise been commented upon and documented. Meaning in the future of that course of conduct to Arizona and New Mexico Indians will next be briefly reviewed.

C H A P T E R I V

A PREFACE TO DISASTER FOR WESTERN INDIANS

Aggressive attacks by Interior and Justice Departments upon the Western Indians and their Reservations by the seizure of Indian rights to the use of water is but a prelude of things to come.^{135/}

^{134/} See above, page 46, footnote 128; See RECOMMENDATIONS II, infra, p. 57.

^{135/} "A Preface to Disaster for the American Indian People" - Conflicts of Interest in Proceedings Before the Supreme Court of the United States - Eagle River Adjudication and Water Division No. 5 Adjudication, March 23, 1971.

That threat is aggravated by the proposal to construct the Central Arizona Federal Reclamation Project and other projects in areas of practically short water supply.^{136/} Special reference is made to the planned seizure of the rights of the Colorado River Indian Reservation, Fort Mojave, Chemehuevi, Fort Yuma and Cocopah Indian Reservations.^{137/}

In detail these facts are reviewed:

1. The Colorado River has been grievously over-appropriated to the point of its total destruction;
 2. Due to the over-appropriation, the Colorado River is now polluted with a salt content which is far above minimum standards of the Public Health Service;
 3. Irrespective of the grave shortage of water and the pollution of the Colorado River, the Secretary of the Interior is proceeding with the construction of the Central Arizona Federal Reclamation Project which will export away an additional 1,200,000 acre-feet of water - which, incredibly, is in truth and fact not available to meet existing needs.
- a. Threatened destruction of Colorado River Indian Reservation, Fort Mojave; Chemehuevi, Fort Yuma and Cocopah Indian Reservations

Seizure of the Colorado River for the Central Arizona Federal Reclamation Project will necessarily destroy the Indian Reservations referred to in the heading set forth immediately above.

^{136/} Ibid., pages 12 et seq.

^{137/} Ibid., page 35; see also Plate I.

There will be no water remaining for their development beyond that which presently exists. Let it be emphasized: Only a very small portion of the total adjudicated irrigable acreage has been developed. That failure to develop is attributable to the consistent policy of the Interior Department to prohibit the construction of the essential irrigation systems. Precisely the same course of conduct has been adhered to by the Interior Department against the Pueblos on the Rio Grande, all as has been reviewed in detail.^{138/}

Reject as spurious the assertion that those above mentioned Colorado River Reservations will be protected by reason of an earlier adjudication.^{139/} That adjudication does not protect those Tribes and their Reservations. Based upon the position of the Justice Department, all as reviewed above,^{140/} the adjudicated rights reside in the United States and do not reside in the Tribes in question. Hence the United States under the 'spurious concepts of the Justice Department - which are denied - would be free to deprive the Tribes of the water in question and award it to the Reclamation Project.

C H A P T E R V

VIOLATION OF INDIAN WINTERS' DOCTRINE RIGHTS BY ADMINISTRATIVE FIAT

There are numerous Indian Reservations throughout Western United States where administrative conduct has had the effect of drastically limiting Indian rights for the benefit of non-Indians.

^{138/} See above, pages 29 et seq.

^{139/} *Arizona v. California*, 373 U.S. 546, 596 et seq. (1963).

^{140/} See above, pages 43 et seq.

A prime example has transpired on Montana's Flathead Indian Reservation. There the Interior Department established what are referred to as "Secretarial rights". By that method the Indians have been effectively deprived of their rights to the use of water for their future development. Beneficiaries of the "Secretarial rights" are the non-Indians who were permitted to occupy the invaluable lands of the Flathead Tribes and to seize Indian rights to the use of water, to the continued and irreparable damage of the Indians. Worthy of repeated reference is the fact that it was in the State of Montana that the Winters Doctrine was first enunciated, which should guarantee to the Indian people rights to the use of water to meet their ^{141/} (1) present and (2) their future reasonable water requirements.

Another ironic fact is that the principles of the Winters Doctrine have been specifically recognized on the Reservation, particularly in regard to the exemption of those rights from State ^{142/} law. Damage to the lives and interests of the Flathead Indians by the Secretarial seizure of their rights is representative of the policy of consistent violation of Indian interests.

Comparable tactics with those used against the Flathead Indians, is being attempted against several Tribes in the State of Arizona. Reference in particular is made to efforts to force upon the White Mountain Apaches a "contract" which would drastically limit

^{141/} See above, Introduction, pages 1 et seq.

^{142/} United States v. McIntire, 101 F.2d 650 (CA9, 1939).

their Winters Doctrine rights for the benefit of the Salt River Federal Reclamation Project. ^{143/} In substance the Secretary of the Interior has for five (5) years attempted to force upon the Indians, in furtherance of the Federal Reclamation Project, a denigration of their rights to supply them a maximum of 36,000 acre-feet annually. Shocking feature of that attempted limitation upon the Indians is this fact: The Reservation has approximately one million five hundred thousand (1,500,000) acres of land. Properly to develop that vast and invaluable Reservation requires several times the 36,000 acre-feet annually that has been proposed.

It will be recalled that the unconscionable effort of the Secretary of the Interior administratively to limit the Yakima Nation in furtherance of a Federal Reclamation Project was summarily rejected ^{144/} by Congress.

Throughout Western United States the arbitrary administrative seizure of Indian Winters Doctrine rights to the use of water continues. That seizure by Federal agencies throughout the vast Missouri River Basin has been reviewed and chronicled. ^{145/}

On the Colville and Spokane Indian Reservations in the State of Washington an intensive investigation has been undertaken under the direction of the Indians, of Federal encroachment upon their invaluable rights to the use of water. A principal area in which invasions of

^{143/} See above, pages 22 et seq.

^{144/} See above, pages 20 et seq.

^{145/} North Dakota Law Review, page 2, footnote 5 above.

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both land and rights to the use of water have transpired is in connection with Grand Coulee Dam and Roosevelt Reservoir created by it. That there has been a clear invasion by Federal agencies of the Indian rights is not subject to being refuted. Sole question is the magnitude of the invasion - ignored by the Secretary of the Interior for forty (40) years - and the corrective measures that can be taken in regard to those invasions. Colville Indians have suffered particularly by reason of the construction of Federal Reclamation projects on Okanogan River. They are also suffering from Chief Joseph Dam built by the Corps of Engineers immediately downstream from Grand Coulee Dam.

In addition both the Colvilles and Spokanes are and have been suffering from the invasion of their rights to the use of water by the issuance of permits to appropriate their rights pursuant to State law. That type of invasion has been permitted without objection by the Secretary of the Interior for a vast number of years. Again, correction is being attempted largely by the Indians themselves who have suffered so long from a clear dereliction of duty by agents of the Trustee.

Great stress must be placed upon the fact that in the vast preponderance of those administrative invasions of Indian rights, the Western Tribes that are involved have been either kept in total ignorance of the encroachments upon their rights or were misled by Federal agents as to the consequences of those encroachments. ^{146/}
146/ See "Federal Encroachment on Indian Water Rights and the Impairment of Reservation Development" Vol. 2 of Joint Committee Print 1969, 91st Cong., 1st Sess.

Inquiries in depth must justifiably be made as to the validity of these most serious charges against Federal administrative action. Those inquiries are invited. Challenges to the charges fully documented are likewise invited.

C H A P T E R V I

GENOCIDAL COURSE ADHERED TO AGAINST AMERICAN INDIANS
BY INTERIOR AND JUSTICE DEPARTMENTS MUST BE REVERSED

Reference has previously been made to the ultimate consequence of the continued deprivation of the American Indians of their invaluable rights to the use of water. Indians are today being systematically planned out of existence by the Interior Department's policy of seizing their life-sustaining rights to the use of water ^{147/} for non-Indian projects and purposes. Reversal by this Nation of the genocidal course against its First Citizens is an imperative.

Markedly the aggressive conduct of the Interior and Justice Departments against the American Indians is inseparably related to their intolerable conflicts of interest which have been reviewed above. A primary consequence of those conflicts of interest is a studied denigration of the Constitutional Trust obligation owing to the American Indians by the Federal Government.

Let this fact be emphasized: Failure of the Secretary of the Interior and the Attorney General properly to perform the functions of the Trustee United States on behalf of the American Indians cannot

147/ See above, Chapter II, pages 12 et seq.

be attributed to Congress. Vast powers reside in both the Secretary of the Interior and the Attorney General which are not being exercised. That executive paralysis is by choice. It is not forced upon them. Hence there are two aspects of those executive derelictions:

- (a) Failure properly to exercise existing Congressional authorization and to exercise the basic Constitutional powers invested in the Executive Branch by that organic law;
- (b) Failure effectively to seek required Congressional enactments which would implement and be in furtherance of the Trust responsibility of the United States of America owing to the Indian people under the Constitution.

C H A P T E R V I I

RECOMMENDATIONS

I

IMMEDIATE FULL PERFORMANCE OF THE TRUST RESPONSIBILITY BY THE SECRETARY OF THE INTERIOR AND THE ATTORNEY GENERAL

- a. Immediate performance is required by the Secretary of the Interior of that officer's obligation as the principal agent of the United States Trustee for the American Indians. It is imperative in that connection that the Secretary of the Interior fully recognize, preserve and protect the Indian Winters Doctrine rights to the use of water. Similar conduct is required of the Attorney General in all matters respecting those Indian rights;

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- b. The Secretary of the Interior, acting with the Attorney General where required, should:
1. Immediately act to prevent the present irreparable damage to the Indians through the seizure of their rights to the use of water by the Bureau of Reclamation and other agencies under his direction, and to demand that all Federal agencies, including but not limited to the Corps of Army Engineers, cease and desist the seizure of those Indian rights;
 2. Where necessary the Secretary of the Interior, acting with the Attorney General, should forthwith initiate proceedings seeking injunctive relief for the Indian people whose rights are being seized, or are being threatened by seizure, for non-Indian projects and purposes;
 3. Proceed with and implement existing programs to determine the present and future water requirements for Indian Reservations as those requirements relate to necessary economic development, including but not limited to agriculture, livestock, forestry, industry, recreation, and other beneficial uses;
 4. Seek to initiate all actions predicated upon the investigations referred to in 4 above, for the judicial determination, adjudication and declaration of the Indians' prior and paramount rights to the use of water;

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5. Discontinue the present policy of seizing or limiting Indian Winters Doctrine rights to the use of water for non-Indian projects or purposes; and take immediate corrective action in regard to those administrative seizures of Indian rights which have in the past transpired;
6. Affirmatively and actively oppose throughout Western United States, the issuance by State agencies of permits to appropriate rights to the use of water within Indian Reservations, or involving sources of water arising outside of those Reservations, and to preclude the seizure of rights to the use of water by trespass or otherwise where this action is taken irrespective of State law.

II

IT SHOULD BE ASSERTED BY THE SECRETARY OF THE INTERIOR AND THE ATTORNEY GENERAL THAT THERE HAS BEEN "RECOGNITION" THAT TITLE TO THE INDIAN WINTERS DOCTRINE RIGHTS TO THE USE OF WATER RESIDES IN THE INDIAN TRIBES OCCUPYING INDIAN RESERVATIONS BY TREATY, EXECUTIVE ORDERS, CONGRESSIONAL ACTS OR OTHERWISE, AND THAT THE TITLE THUS RESIDING IN THE INDIAN TRIBES IS HELD IN TRUST FOR THEM BY THE UNITED STATES. THOSE OFFICIALS SHOULD REFRAIN FROM ASSERTING, AS IS NOW BEING ASSERTED, AND HAS BEEN ASSERTED, THAT INDIAN RIGHTS TO THE USE OF WATER ARE "FEDERAL RESERVED RIGHTS" TITLE TO WHICH IS IN THE UNITED STATES AND NOT HELD IN TRUST FOR THE INDIANS. TO FORESTALL POSSIBLE LOSS TO INDIANS OF THEIR RIGHTS TO THE USE OF WATER, CONGRESSIONAL "RECOGNITION" SHOULD BE OBTAINED.

Grave danger to the American Indians by reason of the concept of "Indian title" has long been recognized. ^{148/} Reference in that

^{148/} See above, pages 43 et seq. Chapter III.

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connection is made to the accentuated aggressive attacks by the Interior and Justice Departments through the denial that the title resides in the Indians to their Winters Doctrine rights to the use of water. Attacks of that character are per se violations of the Trust responsibility by the principal agents of the United States. Those attacks were initially and openly asserted in the Eagle River ^{149/}Case.

In the Pyramid Lake Case now before the Supreme Court on motion for leave to file, the Justice Department -

- (1) Asserts that title to the rights there involved resides in the United States and not in the Pyramid Lake Tribe;
- (2) Attacks - in most manifest error - the very basic elements of the Winters Doctrine as enunciated by the ^{150/}Highest Court.

To forestall further attempts to seize Indian rights and to denigrate the principles of the Indian Winters Doctrine, it is essential to have the rights confirmed by Congress. That process is known as "recognition". ^{151/}In no other way does it appear possible to prevent the attacks by the Secretary of the Interior and the Attorney General upon the rights and interests of the Indian people.

III

IMMEDIATE ACTION SHOULD BE TAKEN BY
THE SECRETARY OF THE INTERIOR:

1. Respecting existing Federal Reclamation Projects and all

^{149/} Supra, page 45.

^{150/} See attachment.

^{151/} See Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 279 et seq. (1948); Hynes v. Grimes Packing Co., 337 U.S. 86, 101.

other primarily non-Indian projects, and those that are abuilding or authorized to be constructed, to provide for Indian units of those projects which will permit the full utilization and exercise by the Indians of their rights to the use of water;

2. No additional Federal Reclamation Projects should be planned or constructed until after the Indian rights to the use of water have been declared, adjudged and the measure of them established. Moreover, as an integral part of those projects there must be units pursuant to which those Indian rights to the use of water may be exercised by the Indians to the full extent;
3. All projects involving the development of water resources - for example, the Corps of Engineers projects - should be subject to provisions of 'III 1 and 2 immediately above.

IV

IN FURTHERANCE OF AND TO GUARANTEE THE FULFILLMENT OF THE TRUST OBLIGATION OF THE UNITED STATES TO THE AMERICAN INDIANS, THERE SHOULD BE ESTABLISHED AN INDEPENDENT AGENCY WITH FULL AUTHORITY TO REPRESENT THE INDIAN PEOPLE IN ALL PHASES AND FACETS OF THEIR LIVES INCLUDING BUT NOT LIMITED TO THE PRESERVATION, PROTECTION AND FULL UTILIZATION OF THE INDIAN WINTERS DOCTRINE RIGHTS TO THE USE OF WATER

Most serious Executive and Congressional consideration must be taken to establish an agency independent of existing departments of the Executive Branch of the Government, to fulfill this Nation's

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trust responsibility to the American Indian people. The proposed Indian Trust Counsel Authority has failed to materialize. Whether that proposal if adopted would suffice to meet the needs of the American Indians is open to serious question.

An independent agency created solely for the American Indians functioning primarily in furtherance of their interests should have, among other things, powers co-extensive with Indian powers, rights, and interests. That agency must have full and unqualified authority to represent the Indian people in all matters before the public, Congress and the Judiciary.

Basically, it should be an American Indian Agency operated by and for Indian people. It is strongly urged Congress take all appropriate action to achieve that end.

Respectfully submitted,


William H. Veeder



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20242

October 12, 1972

IN REPLY REFER TO:
Economic Development
310 W

ATTACKS UPON AMERICAN INDIANS' WINTERS DOCTRINE RIGHTS BY THE JUSTICE AND INTERIOR DEPARTMENTS BEFORE THE SUPREME COURT *

SUMMARY OF ATTACKS ON AMERICAN INDIANS

Aggressive attacks against the American Indian people, by the Justice and Interior Departments, have been launched in the Supreme Court of the United States. Those destructive assaults by those two Departments are directed at the invaluable Indian Winters Doctrine prior and paramount rights to the use of water. This present attack upon the American Indians was presaged by the Justice Department in the Eagle River Case, likewise before the Supreme Court.

Nature of the aggression against the Indian rights to the use of water, without which Western Indian people cannot survive, and the Federal attempt to seize those rights, are reviewed in detail in the accompanying analysis of the case which the Justice Department now seeks to present to the Highest Court.

Denial by the Justice Department to the Supreme Court of the Indian Winters Doctrine rights to the use of water through the assertion that the Federal Government, not the Indians, is the owner of those rights

Attempts by the Justice Department before the Supreme Court to hide - to mask - its destructive attacks upon the rights of the Indian people must not be permitted.

Survival of the Indian people is involved. Western Indians on the barren lands, frequently "hot scorching sands" which constitute their Reservations, are dependent upon the Winters Doctrine as enunciated by the Supreme Court and consistently applied. Pursuant to that doctrine the Indians hold title to the rights essential to meet their present and future water requirements. In the presentation to the Supreme Court the Justice Department asserts that the "Federal Government" - not the Indians - is the owner of the Indian rights, for "federal uses", not Indian uses.

* Attachment: United States of America, Plaintiff v. States of Nevada and California, No. 59 Original in the Supreme Court of the United States, October Term 1972, Filed September 22, 1972.

*Exhibit No. 23—Continued*Justification for the seizure for Federal non-Indian projects of the waters of Western streams is prime objective of the case before the Supreme Court

Navajos, Jicarillas, Colorado River Tribes, Fort Mojaves, Colville Indian Tribes, Pyramid Lake Tribe, against whom the case is specifically directed; all Tribes similarly situated, face disaster by the Interior and Justice Department actions in this case.

Assert to the Supreme Court, as does the Justice Department, that the Federal Government is the owner of the rights to the use of water in the Western streams; effectively deny that the Indians own rights to the use of water held in trust for them, and a long history of intentional violation by the Interior Department of Indian rights will be confirmed. Present seizures of Indian waters will be approved; future seizures of the remaining water will be made easy.

Intolerable - immoral - conflicts of interest within Interior and Justice Departments bring the present disaster to Western Indians

There is epitomized before the Supreme Court in the subject case, the intolerable conflicts of interest within the Justice and Interior Departments. They purport to act for the Indian people, but in truth and in fact they are acting for non-Indian projects.

Executive paralysis, as it relates to the Indian people, within the Justice and Interior Departments, stems from two primary aspects: (1) Both the Interior and Justice Departments are actively engaged in defending against Indian claims for damages experienced by the Indians for illegal seizures of Indian properties, including rights to the use of water; (2) Both Interior and Justice Departments are actively engaged - as in the Supreme Court case - in defending invasions and confiscatory acts by the Secretary of the Interior involving Indian rights to the use of water.

In the words of the President: "No self-respecting law firm" would ever attempt to represent conflicting interests as those presented by the Justice Department to the Supreme Court. There is thus made clear the reasons for the violations of the trust responsibilities owing by the United States to the American Indians, due to the conflicts of interest within the prime agents of the Trustee - the Department of Justice and the Interior Department.

RECOMMENDATION

To date the Supreme Court has not agreed to accept the case the Justice Department seeks to present to it. As a consequence the

Exhibit No. 23—Continued

American Indians - particularly Western Indians - should vigorously oppose the case as filed and request

[1] The Secretary of the Interior that he as principal agent of the Trustee for the American Indians, demand that the Justice Department change its fallacious position to the Supreme Court, and assert that the Indians, not the Federal Government, are the owners of the rights and that the title to those rights of the Indians is held in trust for them by the United States;

[2] Congress take immediate action to recognize, ratify and confirm the Indian rights to the use of water; that title to the Indian rights is held in trust for the Indian people by the United States, which is required to preserve and protect those rights, not seize them as is being presently attempted.

William H. Veeder
William H. Veeder

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Exhibit No. 23—Continued

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20242

October 12, 1972

IN REPLY REFER TO:

Economic Development
310 WATTACKS UPON AMERICAN INDIANS' WINTERS DOCTRINE RIGHTS
BY THE JUSTICE AND INTERIOR DEPARTMENTS
BEFORE THE SUPREME COURT 1/

FOREWORD

As directed, an in-depth analysis has been made of the case which the Justice Department has moved the Supreme Court for leave to file. This analysis is a summary of attacks by the Interior and Justice Departments upon the American Indian people through the seizure of their Winters Doctrine rights to the use of water. That practice of seizing Indian rights for non-Indian purposes has been fully reviewed with documentation for Congress 2/ and the Interior Department. 3/

There are three crucial aspects of the case:

- a. An aggressive attack by Justice and Interior Departments 4/ upon all American Indian Winters Doctrine rights which is specifically directed at Pyramid Lake. 5/

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- 1/ Attachment: United States of America, Plaintiff v. States of Nevada and California, No. 59 Original in the Supreme Court of the United States, October Term 1972, Filed September 22, 1972.
- 2/ "Federal Encroachment on Indian Water Rights and the Impairment of Reservation Development" Vol. 2 of Joint Committee Print 1969, 91st Cong., 1st Sess., pp. 497 et seq.
- 3/ "Congressional Approval of the California-Nevada Interstate Compact will Destroy Pyramid Lake Correlated with the Analysis of Pyramid Lake Task Force - Final Report" January 1972.
- 4/ See *infra*, pages 9 et seq.
- 5/ Pyramid Lake is situated in northwestern Nevada, approximately twenty miles north of Reno. It, together with a substantial segment of the Truckee River, is totally embraced within the Pyramid Lake Indian Reservation occupied by the Pyramid Lake Tribe of Northern Paiute Indians.

Exhibit No. 23—Continued

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b. Violation by the Interior Department and Justice Department of this Nation's trust responsibilities, and of legal ethics - indeed, the law - due to their "inherent"^{6/} and "intolerable"^{7/} conflicts of interest;

c. Denial by the Justice Department and Interior Department of title of the Pyramid Lake Tribe to the use of water of the Truckee River, sole source of supply to maintain Pyramid Lake; assertion by the "Federal Government" that it not the Tribe is the owner of those rights with authority to destroy Pyramid Lake in direct violation of the Indian rights and the trust obligations owing to the Indians and their rights.

VIOLATION OF ANNOUNCED INDIAN POLICY

"The United States Government acts as a legal trustee for the land and water rights of American Indians" said the President to Congress on July 8, 1970.^{8/} For the Attorney General, Department of Justice and the Secretary of the Interior, the President established these standards of performance on behalf of the American Indians, of those two Cabinet officials as the principal agents of the Trustee United States: "Every trustee has a legal obligation to advance the interests of the beneficiaries of the trust [a] without reservation and with the highest degree of [b] diligence and [c] skill."^{9/}

^{6/} President Nixon's Indian Policy Declaration July 8, 1970, Cong. Rec. Senate July 9, 1970, pp. S. 10894 et seq.

^{7/} Letter dated August 13, 1971, from Mr. Leonard Garment to Attorney for Coeur d'Alene, Spokane and Kalispel Indian Tribes.

^{8/} Cong. Rec. Senate, July 9, 1970, pp. 10894 et seq., Sec. 8, p. 10896.

^{9/} Ibid.

Exhibit No. 23—Continued

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Violation of that Presidential policy and required standards of performance by the Trustee are the factual and legal consequences of the complaint and brief in support now before the Supreme Court for consideration.

INTOLERABLE CONFLICTS OF INTEREST OF THE INTERIOR AND JUSTICE DEPARTMENTS PERVADE THE CASE BEFORE THE SUPREME COURT

A. Intolerable conflict of interest of Interior Department

Destruction of Pyramid Lake is an announced policy of the Secretary of the Interior as set forth in the recent Task Force Report.^{10/} That destruction stems from the basic decision by the Secretary to divert away from the Truckee River the vast preponderance of water of that stream required to maintain the Lake. Truckee River water thus diverted by the Secretary has been and, unless that official is restrained, will be used for these non-Indian projects under his administration and which are described in the Justice Department complaint and brief being considered by the Supreme Court: (1) The Newlands Federal Reclamation Project;^{11/} (2) The Washoe Federal Reclamation Project;^{12/} (3) Stillwater Wildlife Refuge;^{13/} and for other "Federal" non-Indian uses.

Seizure of Truckee River water for those projects by the Secretary of the Interior and the diversion of that water away from Pyramid Lake; the disastrous consequences of that Secretarial diversion are partially described for the Supreme Court by the Justice

^{10/} Pyramid Lake Task Force Final Report, December 1971. See footnote 4.

^{11/} Attachment, page 7, paragraph VIII.

^{12/} Attachment, page 8, paragraph XI.

^{13/} Attachment, page 8, paragraph X.

Exhibit No. 23—Continued

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Department. Those consequences of Secretarial action include, but are not limited to (a) the destruction of invaluable Indian fisheries in both the Truckee River and Pyramid Lake; (b) the precipitous decline of Pyramid Lake; (c) rapidly increasing salinity of the Lake, all of which, in the words of the Justice Department, threaten "the continued existence of the Lake as a useful body of water."^{14/}

Failure of the Justice Department fully to disclose the facts as to the planned destruction of Pyramid Lake by the Secretary of the Interior, to this Nation, the Supreme Court and the Pyramid Lake Tribe, could be described - if thought wilful - as being intentionally deceptive for these facts are well known and fully documented. Indeed, official Congressional^{15/} and Interior Department^{16/} publications fully available and undoubtedly known to the Justice Department, review in detail the intention of the Interior Department to destroy America's most beautiful desert lake in furtherance of the highly subsidized reclamation projects described by the Justice Department to the Supreme Court.

Explanation of the Justice Department's conflict of interest will reveal reasons for its failure fully to furnish complete information to the Nation, the Supreme Court and the Pyramid Lake Tribe in the case it seeks to have the Highest Court review.

^{14/} Attachment, pages 4 and 5.

^{15/} "Federal Encroachment on Indian Water Rights and the Impairment of Reservation Development" Vol. 2 of Joint Committee Print 1969, 91st Cong, 1st Sess.

^{16/} "Congressional Approval of the California-Nevada Interstate Compact will Destroy Pyramid Lake Correlated with the Analysis of Pyramid Lake Task Force - Final Report" January 1972.

B. Intolerable conflict of interest of
Justice Department

Nature of the conflict of interest of the Justice Department encompasses every phase of its complaint and brief in support, filed with the Supreme Court. What does not appear in the complaint but unquestionably is an overriding factor is this - should be embarrassing - circumstance:

The same officials in the Justice Department principally responsible for the filing with the Court, are now actively engaged defending a claim for monetary restitution to the Pyramid Lake Tribe for the irreparable damage to the Tribe and their rights due to the seizure by the Secretary of the Interior of the Truckee River waters required to maintain the Indians' Pyramid Lake and their fisheries, for the conflicting uses of the above mentioned reclamation projects. ^{17/}

Stress is placed upon this fact: In the case for damages suffered by the Pyramid Lake Tribe the Justice Department is a vigorous adversary against the Tribe;

Before the Supreme Court in the case under consideration - in a shamefully improper stance - the Justice Department purports to advocate the interests of the Pyramid Lake Tribe involving the identical activities of the Secretary of the Interior.

^{17/} Before the Indian Claims Commission: The Northern Paiute Nation [Pyramid Lake Tribe], Plaintiffs v. The United States of America, Docket 87-A.

Exhibit No. 23—Continued

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C. Admission by Interior Department officials of their conflict of interest respecting Pyramid Lake

Admission by the Interior Department officials of their conflict of interest in regard to the Pyramid Lake Tribe and their rights in the Truckee River and Pyramid Lake, is a matter of record before a Senate Committee.^{18/} There Assistant Secretary Loesch and former Secretary of the Interior Hickel testified in detail as to their conflicts of interest between the rights and interests of the Pyramid Lake Tribe of Indians and Interior Department agencies which are seizing Truckee River waters to which the Indians are legally entitled. It was not, however, until the Justice Department chronicled in detail to the Supreme Court the facts of the case here being reviewed that the magnitude of the disaster to the Tribe and the Nation could be fully assessed.

PRESIDENTIAL CASTIGATION OF THE INTERIOR AND JUSTICE
DEPARTMENTS FOR THEIR BREACH OF TRUST TO THE AMERICAN
INDIANS

Quite probably the President had in mind the shameful conduct of the Interior and Justice Departments respecting the Pyramid Lake Tribe, among others, when he castigated the Attorney General and the Secretary of the Interior in these terms: "No self-respecting law firm would ever allow itself to represent two opposing clients in one dispute; yet the Federal government has frequently found itself in precisely that position."^{19/} General consequences of the whole amoral

^{18/} Hearings before the Subcommittee on Indian Affairs, Committee on Interior and Insular Affairs, United States Senate, September 21, 25, 1970.

^{19/} Cong. Rec. Senate, July 9, 1970, pp. 10894 et seq., Sec. 8, p. 10896.

Exhibit No. 23—Continued

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posture of the Justice and Interior Departments before the Supreme Court is well described in these Presidential terms: "* * * the Indians are the losers when such situations arise. More than that, the credibility of the Federal government is damaged whenever it appears that such a conflict of interest exists."^{20/}

Impropriety of the conduct of the Interior and Justice Departments before the Supreme Court is only one aspect of the case in question. Direct, immediate and irreparable damage to the Pyramid Lake Tribe and all Tribes similarly situated, must of necessity stem from the conduct of those Federal officials. Nature of those damages - how they occur - is the next phase of this consideration.

DENIAL BY THE JUSTICE DEPARTMENT OF THE TITLE OF THE
PYRAMID LAKE TRIBE TO RIGHTS TO THE USE OF WATER BEFORE
THE SUPREME COURT TO AVOID LOSING ITS CASE BEFORE THE
INDIAN CLAIMS COMMISSION

Admit that the Pyramid Lake Tribe has title to the rights to the use of water before the Supreme Court and the Justice Department would (a) lose the case in which it is adversary to the Tribe before the Indian Claims Commission; (b) lose many other present and potential cases by Indians similarly situated as the Pyramid Lake Tribe.

Impossibility of proper performance by the Justice Department respecting this Nation's Trust owing to the Pyramid Lake Tribe

20/ Id.

Exhibit No. 23—Continued

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is now a matter of record; As stated: Before the Indian Claims Commission the Justice Department is the resolute adversary of the Pyramid Lake Tribe involving precisely the same issue ultimately to be resolved by the Supreme Court. In that money-damage case the Justice Department seeks to defend against that Tribe, the long-standing and undeniable violation by the Secretary of the Interior of the rights and interests of the Pyramid Lake Tribe.^{21/}

In the above quoted words of the President, "no self-respecting law firm * * *" would allow itself "to represent two opposing clients in one dispute." Nevertheless that is the unseemingly posture of the Justice Department before the Supreme Court. Before both the Supreme Court and the Indian Claims Commission, the Justice Department is (a) the lawyer for the Secretary of the Interior who has seized without right, the waters of the Truckee River to which the Indians are legally entitled, and the Justice Department is vigorously defending the conduct of the Secretary of the Interior; (b) before the Indian Claims Commission, the Justice Department is again defending the activities of the Secretary of the Interior and denying the rights and interests of the Pyramid Lake Tribe. Immediate consequence in the case before the Supreme Court is the denial of the Indian rights to the use of water held in trust for

^{21/} See above footnotes 3 and 4, "Federal Encroachment on Indian Water Rights and the Impairment of Reservation Development" Vol. 2 of Joint Committee Print 1969, 91st Cong. 1st Sess. pp 497 et se "Congressional Approval of the California-Nevada Interstate Compact will Destroy Pyramid Lake Correlated with the Analysis of Pyramid Lake Task Force - Final Report" January 1972.

Exhibit No. 23—Continued

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them by the United States, but rather the assertion that the Federal Government is the owner of those rights. It must likewise be emphasized that no mention is made of the trust status of the United States of America in the case before the Supreme Court. This ultra vires attempt to abandon a Constitutional obligation owing to the Indian Tribes - to defend outrageous conduct of the Interior bureaucracy against the Pyramid Lake Tribe and all similarly situated Indians - must necessarily shock the conscience.

"Federal" rights asserted in contravention of the rights of the Pyramid Lake Tribe held in trust for them

Effectively to deny the rights of the Pyramid Lake Tribe held in trust for them by the United States, the Justice Department repeatedly asserts title in the United States to the rights to be adjudicated by the Highest Court. Rejecting "the private interests" ^{22/} of the Pyramid Lake Tribe, the Justice Department asserts only "Federal rights." These direct quotations from the filing by the Justice Department with the Supreme Court disclose its purpose and objectives in the proceedings here under review:

"* * * this litigation is to establish the right of the United States to the use of a portion of the waters of the Truckee River system for the maintenance of Pyramid Lake and for the other purposes shown in the complaint." ^{23/}

"* * * the United States may withdraw waters * * * and reserve them for federal uses." ^{24/} (Emphasis supplied)

^{22/} See Presidential Message, supra, page 2, footnote 8.

^{23/} See attachment, page 17.

^{24/} See attachment, page 21.

Exhibit No. 23—Continued

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"A federal reservation of rights to the use of waters may be express * * * or implied * * * for particular purposes * * * for national forests and Indian reservations * * *." ^{25/}

"The Court has traditionally exercised its original jurisdiction * * * to quiet the United States' title to property." ^{26/}

"The primary relief we ask in this case is such a quieting of the United States' title to its interest in the waters at issue." ^{27/}

"The United States' water rights * * *" not those of Indians held in trust for them is repeated and reiterated throughout both the complaint and brief. ^{28/}

Failure of the Justice Department to assert title in the Pyramid Lake Tribe, which title is held in trust for them by the United States, is an attempted denigration of their rights; an attempted avoidance of responsibility, unfitting conduct for an agent of the National Trust for Indian people.

Denial by the Secretary of the Interior of the rights to the use of water of the Pyramid Lake Tribe

Only by denying the title of the Pyramid Lake Tribe to its rights to the use of water in the Truckee River and Pyramid Lake is it

^{25/} See attachment, page 21.

^{26/} See attachment, page 25.

^{27/} See attachment, page 26.

^{28/} See attachment, page 26.

Exhibit No. 23—Continued

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possible for the Secretary of the Interior to justify that official's long-term violation of those Indian rights.^{29/} Proof of the destruction by the Secretary of the Interior of the invaluable fisheries of the Pyramid Lake Tribe; of the seizure of Truckee River water for non-Indian projects and purposes, is not subject to successful challenge.^{30/} Denial by the Interior Department of the title of the Pyramid Lake Tribe to rights to the use of water is specifically stated in these words by the Secretary's Pyramid Lake Task Force - Final Report:

"* * * there is no decreed right or any other type of right * * *" in the Pyramid Lake Tribe "[a] to ; maintain Pyramid Lake itself or [b] to maintain a fishery in Pyramid Lake."^{31/}

There is thus presented the Interior and Justice Departments acting in concert to deny the title of the Pyramid Lake Tribe. By a legal subterfuge - the Indians have no rights! - the immoral invasion of the rights of the Tribe is justified by the two principal agencies of the Federal Government required by law to protect and preserve Pyramid Lake for this Nation and the Tribe.

- ^{29/} Congress has published an in-depth review of the amoral conduct of both the Interior and Justice Departments in connection with the Newlands Federal Reclamation Project and the Orr Water Ditch litigation, brought for the purpose of confirming the destruction of Pyramid Lake. See "Federal Encroachment on Indian Water Rights and the Impairment of Reservation Development" cited in footnote 3 above, at page 497 et seq. See also in that connection "Congressional Approval of the California-Nevada Interstate Compact will destroy Pyramid Lake * * *" cited in footnote 4 above, at pp 7 et seq.; pp 35 et
- ^{30/} See "Congressional Approval of the California-Nevada Interstate Compact * * *" cited in footnote 4 above, at pp. 44 et seq.
- ^{31/} Ibid. at page 2.

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UNTRUE AND MISLEADING STATEMENTS PRESENTED TO THE SUPREME COURT BY THE JUSTICE DEPARTMENT IN ITS ATTACKS UPON THE RIGHTS OF THE PYRAMID LAKE TRIBE; ITS POSITION WHICH IN ACTUAL PRACTICE IS ONE OF AN AGGRESSIVE ADVERSARY OF THE TRIBE

Having asserted 'title' in the United States - adversary to the Pyramid Lake Tribe - the Justice Department makes untrue and entirely misleading statements to the Highest Court. Respecting the Act authorizing the Washoe Federal Reclamation Project which will administer to Pyramid Lake the final coup, this untrue and totally fabricated statement is made: "Thus, rather than diminishing the right to water for the maintenance and preservation of Pyramid Lake, the Act protects and reinforces this right."^{32/} That untrue statement respecting the consequences of the Washoe Project epitomizes the entire nature of the sophistry being practiced by the Justice Department upon the Highest Court. In a 1964 report - still official - the Interior Department states that the "inflow to the [Pyramid] lake * * * is estimated * * * as * * * 155,000 acre-feet after the Washoe Project is in full operation."^{33/} This in itself is a denial of the untrue statement to the Court that the Washoe Project would preserve and protect Pyramid Lake. Indeed, Justice admits the present and continuing precipitous decline of Pyramid Lake by 70 feet; that the annual shortage of water, largely due to the Interior Department's

^{32/} Attachment, page 23.

^{33/} See Action Program Report for Resource Development, Truckee and Carson River Basins California-Nevada, October 1964; See Pyramid Lake Task Force Final Report, December 1971; See full analysis of Interior's planned destruction of Pyramid Lake "Congressional Approval of the California-Nevada Interstate Compact will Destroy Pyramid Lake * * *" cited in footnote 4 above.

Exhibit No. 23—Continued

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conduct, is between "125 and 150 thousand acre-feet."^{34/} It is likewise admitted by the Justice Department that at present without the Washoe Project - now a-building - the inflow into the Lake only to maintain its present level must be between 375,000 and 400,000 acre-feet.

Honest presentation to the Court, to the Nation and the Indians, dictates that in truth and fact the Washoe Federal Reclamation Project, the existing Newlands Federal Reclamation Project, and present Interior plans for that project, must of necessity seize³ virtually all of the waters of the Truckee River leaving only sporadic, infrequent and totally unknown flows of that stream into the Lake which will be destroyed by reason of those facts. A study of Interior Department's report on the Washoe Project proves conclusively that the Interior Department plans to use all of the waters of the Truckee River that it can seize, for non-Indian projects and purposes. It is of interest that Interior refers to water entering Pyramid Lake as being "unused".^{35/}

Proof of Interior's continuing and present plans for seizing Truckee River water for primarily reclamation projects with the attendant destruction of Pyramid Lake, is the above-cited Pyramid Lake Task Force Final Report, December 1971. That report has been accepted by the Secretary of the Interior. Thus the Secretary of the Interior admits that the present and continuing decline of Pyramid Lake is due largely to the activities of the Interior Department's

^{34/} Attachment, page 5.

^{35/} House Document No. 181, 84th Cong. 1st Sess., Washoe Project, June 14, 1955.

Exhibit No. 23—Continued

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reclamation and other projects which seize the waters required for Pyramid Lake, for non-Indian projects and uses. That report states: "* * * to maintain Pyramid Lake at its present level * * *" by using Truckee River water "* * * it must be at the expense of present competing water use areas" that the Interior Department has built or is now building, all of which are controlled by the Secretary of the Interior.^{36/}

Rejecting the idea of fulfilling the responsibility to the Nation and the Indian people by the preservation of "America's most beautiful desert lake; the report, now the Secretary's, says this: "* * * water to be salvaged for Pyramid Lake should not be obtained by destruction * * *" of those non-Indian projects administered by the Secretary in violation of the trust responsibility to the Indian people.^{37/} These statements prove the sham now being presented to the Supreme Court.

Based upon actual facts; long-term course of conduct dating for almost three-quarters of a century in which the Justice Department acted with full knowledge and in concert^{38/} with the Interior Department respecting the diversion of Truckee River water away from Pyramid Lake, the complaint and brief filed with the Supreme Court can only be described as frivolous. In that connection reference

^{36/} Pyramid Lake Task Force Final Report, December 1971, page 33.

^{37/} Id.

^{38/} Subsequently reviewed.

Exhibit No. 23—Continued

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has already been made to the untrue statement to the Supreme Court that the Washoe Project, which is totally destructive of Pyramid Lake, actually "protects and reinforces" the right "for the maintenance and preservation of Pyramid Lake."^{39/} By reason of the misleading language used in the Justice Department complaint, it would appear that the invaluable fisheries in the Lake and Truckee River, destroyed by the Interior Department, would be restored.^{40/} That is incorrect. Artificial fisheries - the probability of which tests have proved to be highly dubious - is all that is proposed. Again it is emphasized, Pyramid Lake as a viable body of water is to be destroyed by the Interior Department, not preserved as the Justice Department filing erroneously presents to the Supreme Court.

Misleading and untrue statements involving the law

1. A sham "advisory opinion" by the Supreme Court is sought to avoid Executive responsibility

Failure of the Interior and Justice Departments properly to fulfill their Executive responsibilities within the law gives rise to the endeavor to obtain from the Supreme Court an "advisory opinion." It is, of course, elemental that before that Court will invoke its jurisdiction there must be an actual case or controversy in conformity with the Constitution; that it will not render advisory opinions.

These facts belie the assertion made by the Justice Department to the Supreme Court: "* * * the United States cannot properly

^{39/} Attachment, page 23.

^{40/} Attachment, page 8, par. XI; page 9, Par. XII; pp. 14-15; pp. 23-24.

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determine its obligations, contractual or otherwise * * *" without a judicial determination:^{41/}

(a) Virtually total control of Lake Tahoe, the Truckee River, its tributaries, Pyramid Lake, and the Carson River resides in the Secretary of the Interior by reason of Federal dams, diversion and other structures within his sole jurisdiction;

(b) Decrees, the Orr Water Ditch Decree on the Truckee River;^{42/} Alpine Decree^{43/} on the Carson River; giving virtually total legal control, have been entered by the Federal District Court for Nevada. Both decrees operate interstate - California and Nevada - with continuing jurisdiction.

Adamant refusal of the Secretary of the Interior either (a) to exercise existing powers over the structures controlling the waters of the streams in question; (b) to seek enforcement of the decrees, stigmatizes the request for judicial relief from the Highest Court. Succinctly stated: There is a failure, total and amoral, on the part of the Trustee to fulfill its obligations by enforcement of the decrees respecting beneficial use of water. Exercise by the Secretary of the Interior of his existing powers would put an end to the need for a Supreme Court decision.^{44/}

^{41/} Attachment, page 12, par. XIX.

^{42/} Attachment, page 11, par. XVIII.

^{43/} United States v. Alpine Land & Reservoir Company, D-183 in the United States District Court for the District of Nevada, 1950.

^{44/} See "Congressional Approval of the California-Nevada Interstate Compact will Destroy Pyramid Lake Correlated with the Analysis of Pyramid Lake Task Force - Final Report" pages 9 et seq.

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2. Untrue statements made by the Justice Department respecting the Orr Water Ditch Case

Interstate operation of the Orr Water Ditch Decree, controlling the use of Truckee River waters in the State of California is perhaps its most crucial feature from the standpoint of the Law.^{45/} Hence the statement of the Justice Department that there were not "any California water right holders * * * parties to the suit,"^{46/} is completely untrue. Indeed, primary controls over the Sierra Pacific Power Company and the Federal structures in California totally reject the assertion relative to the need for an interstate decree. It exists already. Gravest difficulty to the Nation and the Indians is that neither the Justice Department nor the Interior Department have the courage to enforce it, hence the timorous effort to avoid the interstate obligations fully provided for by the Orr Water Ditch Case.

3. Untrue statements respecting the history of Orr Water Ditch Case

Failure of the Justice Department to present to the Supreme Court true and correct facts respecting the Orr Water Ditch Case shocks the conscience.^{47/} A most careful fully documented review totally refutes the statement that the Justice Department representing the Reclamation Bureau in that case was not fully apprised; did not fully know the consequences of its acts. Reject as untrue the

^{45/} Ibid., pages 9 et seq.^{46/} Attachment, page 11, par. XVII.^{47/} Attachment, page 11, par. XVII; XVIII; page 24, C.

statements it did not know the effects of the Orr Water Ditch Case⁴ upon Pyramid Lake. The Justice Department knew and the record proves it knew Pyramid Lake and the fisheries would be destroyed when it prosecuted the case and obtained the Orr Water Ditch Decree purporting to authorize the diversion of virtually the entire flow of the Truckee River for most of the year for storage in Lahontan Reservoir and for direct use both in the Carson Valley and miles to the south of Pyramid Lake which was and is deprived of water.^{48/}

Enforcement of the beneficial use provisions of the Orr Water Ditch Decree by Interior and Justice would prevent the diversion of but a minuscule part of that flow. However, due to their "intolerable conflict" of interests they prefer to destroy Pyramid Lake rather than pursue that very available remedy provided by the decree in question. It is unworthy of the Justice Department thus crassly to pervert the truth to the Highest Court.

Equally untrue - and devious - is the statement that in 1944 the personnel in the Justice and Interior Departments "had not fully appreciated" the destructive consequences upon the "fish life" caused by the Newlands Federal Reclamation Project. Again sophistry by the Justice Department - in defense of the Secretary of the Interior; an aggressive action against the Indian claims for destruction of their fisheries - is presented to the Supreme Court. Being

^{48/} See "Congressional Approval of the California-Nevada Interstate Compact will Destroy Pyramid Lake Correlated with the Analysis of Pyramid Lake Task Force - Final Report", pages 9 et seq.

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responsible in regard to the Orr Water Ditch Case in 1944, these facts were well known: (1) Truckee River water was being diverted away from Pyramid Lake and wasted on the Newlands Federal Reclamation Project - at that time the fiasco of that project was referred to as the world's largest muskrat farm; (2) It was a matter of record that the Secretary of the Interior through the construction of Derby Dam across the Truckee River above Pyramid Lake, and the seizure of virtually all of the water, had destroyed the Indian fisheries, for the benefit of the Newlands Federal Reclamation Project. It is a matter of record, as stated by an Interior Department report, that "The once famous cutthroat trout fishery of Pyramid Lake and Truckee River ceased to exist about 1938 * * *"^{49/} Thus to represent to the Supreme Court that the destruction of the fisheries by the Secretary of the Interior antecedent to 1944, was not "appreciated" simply is an intentional misstatement. At all costs the Justice Department is protecting the Secretary of the Interior; attacking with vigor the claims of the Pyramid Lake Tribe both as to its right to maintain Pyramid Lake and its invaluable right of fishery.

Reject as untrue the Justice Department statements
respecting the objective and purpose of the
Orr Water Ditch Case

Acting in concert the Justice and Interior Department lawyers initiated the Orr Water Ditch Case. They offered extensive

^{49/} Action Program Report for Resource Development, Truckee and Carson River Basins California-Nevada, October 1964, pages 24-25.

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proof of alleged water requirements for the Newlands Federal Reclamation Project. From the record intensively reviewed over almost thirty (30) years, it is proved there is not a scintilla of evidence to support the assertions to the Supreme Court by the Justice Department that the officials of those two Departments did not know the consequences of their acts, namely, an attempt to seize all of the waters of the Truckee River for the Newlands Federal Reclamation Project, with the attendant destruction of the Indian fisheries and their Lake.^{50/}

From the Report of the Special Master in the Orr Water Ditch Case; from the face of the decree which was entered, the intention of the two Departments to seize all of the waters of the Truckee River for the Newlands Federal Reclamation Project is manifest and the consequences of that action have been repeated above.^{51/} It is frivolous to refer, as does the Justice Department, to the "so-called 'final decree,'" Fundamentally as the Interior and Justice Departments well know, they violated their trust responsibilities to the Pyramid Lake Tribe when they failed to preserve and protect the Tribe's rights in that decree. Nevertheless it is manifest from the standpoint of good conscience and equity that a trustee may not benefit from his own wrong-doing. Hence the Justice and Interior Departments are precluded from endeavoring to apply the precepts of res judicata

^{50/} For a full review and documentation totally refuting the position taken by the Justice Department in its allegations to the Supreme Court, see "Congressional Approval of the California-Nevada Interstate Compact will Destroy Pyramid Lake Correlated with the Analysis of Pyramid Lake Task Force - Final Report" January 1972, pages 8 et seq.

^{51/} Id.

Exhibit No. 23—Continued

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against the Indians under that final decree. Moreover, it is clear beyond question that if the decree were enforced in connection with its requirements for beneficial use, the diversions away from Pyramid Lake pursuant to it would be minuscule in comparison with the present diversions.

PERVERSION OF THE LAW TO SUPPORT "FEDERAL" RIGHTS;
TO DEFEAT RIGHTS TO THE USE OF WATER OF THE
PYRAMID LAKE TRIBE

To dissemble in the presentation of the law to achieve a legal conclusion is an unworthy course of conduct before the Supreme Court. Yet in the Justice Department brief the Winters Decision^{52/} is purportedly relied upon to support the claim that title to the rights involved resided in the "United States" for "federal uses" - not in the Pyramid Lake Tribe for its uses. Reject that presentation as being intentionally misleading. In the Winters Case (1) the Indians held title to the rights to the use of water before the Court; (2) the United States was acting for the Indians to protect the Indian rights. Continuing its unworthy conduct, the Justice Department cites the Winters Decision to support the claim of the United States for "an abundant fishery".^{54/} That mis-citation of the Winters Case purporting to establish a Federal right of fishery is an outrageous course of conduct by the Justice Department. A casual reading of the case will, as stated, prove that the Indians, not the United States, own the

^{52/} Winters v. United States, 207 U.S. 564 (1908).

^{53/} See attachment, page 23.

^{54/} Attachment, page 22.

Exhibit No. 23—Continued

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rights to the use of water. Nature, extent, and adequacy of the Indian rights to the use of water - distinguished from Federal rights - have been reviewed in detail and fully documented.^{55/}

ATTACK BY JUSTICE DEPARTMENT ON INDIAN RIGHTS
"A PREFACE TO DISASTER FOR THE AMERICAN INDIAN PEOPLE"

Aggressive attack by the Justice Department in its effort to denigrate Indian Winters Doctrine rights is a firmly established policy of that Department. Its conflict of interest requires it to proceed as a sharp adversary against the Indians in one court and purport - as here - to defend them in another. That shameful conduct by the Justice Department before the Supreme Court has been reviewed and documented in "A preface to Disaster for the American Indians".^{56/} In great detail the concerted attack of the Justice Department on the Indian rights is reviewed, and the great effort through mis-citation of authority by the Justice Department to convert the prior and paramount Winters Doctrine rights to the use of water of the Indian people into the "Federal" rights which are asserted. That attack mounted more than a year ago, is culminating before the Supreme Court in the aggressive assault upon the rights to the use of water of the Pyramid Lake Tribe, all as reviewed above.

CONCLUSION

Summary and conclusions are set forth in the opening pages.

William H. Veeder
William H. Veeder

^{55/} See "Congressional Approval of the California-Nevada Interstate Compact will Destroy Pyramid Lake Correlated with the Analysis of Pyramid Lake Task Force - Final Report" January 1972.

^{56/} United States v. District Court in and for the County of Eagle, 401 U.S. 520 (1970).

No. Original

In the Supreme Court of the United States
OCTOBER TERM, 1972

UNITED STATES OF AMERICA, PETITIONER

v.

STATES OF NEVADA AND CALIFORNIA, RESPONDENTS

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MOTION FOR LEAVE TO FILE COMPLAINT,
COMPLAINT AND BRIEF IN SUPPORT OF MOTION

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In the Supreme Court of the United States

OCTOBER TERM, 1972

No. Original

PLAINTIFF

UNITED STATES OF AMERICA, PETITIONER

v.

STATES OF NEVADA AND CALIFORNIA

MOTION FOR LEAVE TO FILE COMPLAINT

The United States of America respectfully asks leave of the Court to file the attached Complaint against the States of Nevada and California.

ERWIN N. GRISWOLD
Solicitor General

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proximately 20 miles through the State of California and then crosses into the State of Nevada, where it flows for approximately 65 miles passing through the cities of Reno and Sparks and emptying into Pyramid Lake.¹

III

Lake Tahoe is located in the Sierra Nevada Mountains, and has a natural surface elevation of approximately 6224 feet above sea level. The boundary line between the States of California and Nevada runs through Lake Tahoe, and the lake receives drainage from the mountains surrounding it in both States. At the outlet of the lake, in the State of California, is a dam owned by the United States and operated by the Truckee-Carson Irrigation District under a contract with the United States pursuant to a decree entered June 4, 1915, in the case entitled *United States v. Truckee River General Electric Co.* in the United States District Court for the Northern District of California, Civil No. 14861. The dam permits storage of approximately 750,000 acre feet of water by raising the natural level of Lake Tahoe approximately six feet.

IV

Pyramid Lake is a desert lake approximately 30 miles north of Reno, Nevada. It is a unique national

¹ We have inserted into the back cover, *infra*, a copy of a map entitled *Pyramid Lake Task Force Major Water Storage & Conveyance facilities of the Tahoe-Truckee-Carson Basins.*

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resource both from the standpoint of its beauty and as the natural habitat of both fish and wild fowl, which rely upon the lake for existence and protection. It is the natural terminus of the Truckee River and has no outlet. Its surface elevation is now approximately 3800 feet above sea level. It is now approximately 5 miles wide and 20 miles long, and has a maximum depth of 335 feet. With the exception of a small amount of direct precipitation and drainage from the low lying mountains surrounding it, its sole source of water is the Truckee River. A flow of between 375,000 and 400,000 acre-feet of water per year from the Truckee River into the lake is required to replace evaporation losses, and thus to maintain the present level of the lake. In recent years the average flow into the lake from the Truckee River has been approximately 250,000 acre-feet, leaving an annual deficit of between 125 and 150 thousand acre-feet. As a result primarily of diversions of water from the Truckee River, the level of the lake has dropped more than 70 feet since 1906, destroying fisheries, threatening extinction of the species of trout native to the lake, increasing the salinity of the lake, causing land erosion and threatening the continued existence of the lake as a useful body of water.

V

Members of the Pyramid Lake Paiute Tribe of Indians have lived on the shores of Pyramid Lake from time immemorial. They have fished in the lake and have used the fish for food and for barter. They

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have aided their support by charging fees to sport fishermen for licenses to fish in the lake. They have relied upon water from the Truckee River for irrigation, for domestic uses, for maintenance of the level and quality of the lake, and for maintenance of the lower segment of the Truckee River as a natural spawning ground for lake fish.

VI

On November 29, 1859, the Department of the Interior directed that an area including Pyramid Lake and the lands surrounding the lake, together with the valley along the Truckee River from the mouth of the river upstream to a point approximately two miles south of Wadsworth, Nevada, be reserved and set aside from the public domain as the Pyramid Lake Indian Reservation. This reservation was confirmed on March 23, 1874, by an executive order signed by President Grant. The area was reserved for members of the Pyramid Lake Paiute Tribe primarily because it constituted their aboriginal home and the lake provided a large fishery which was the principal source of the Tribe's livelihood.

VII

In establishing the Pyramid Lake Reservation in 1859, the United States, by implication, reserved for the benefit of the Pyramid Lake Indians sufficient water from the Truckee River for the maintenance and preservation of Pyramid Lake, for the maintenance of the lower reaches of the Truckee River as a

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natural spawning ground for fish and for the other needs of the inhabitants of the Reservation such as irrigation and domestic use. The United States, for the Pyramid Lake Indians, claims these rights with a priority date of November 29, 1859.

VIII

Under the authority of the Reclamation Act (Act of June 17, 1902, 32 Stat. 388), the Secretary of the Interior on March 14, 1903, approved the construction of the Newlands Reclamation Project, originally known as the Truckee Project. A diversion dam on the Truckee River, known as Derby Dam, was completed by June of 1905. As a part of the Newlands Reclamation Project, water is diverted from the Truckee River at Derby Dam near Wadsworth, Nevada. A small percentage of the water is used for irrigation within the Truckee division of the Newlands project; most is transported into the Carson River watershed in Nevada where it is either stored in Lahontan Reservoir with waters from the Carson River for later use or used immediately for irrigation in the Carson Division of the Newlands Irrigation Project. The Newlands Irrigation Project works are owned by the United States but are operated by the Truckee-Carson Irrigation District under a contract with the United States dated December 18, 1926, as amended.

IX

Drainage from the Carson Division of the Newlands project is used in the Stillwater Wildlife Ref-

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uge, which was designated as a national wildlife refuge in 1948. The refuge is owned and operated by the United States in accordance with the Migratory Bird Conservation Act (45 Stat. 1222), as amended.

X

The United States claims a right to the use within the Stillwater Wildlife Refuge of any runoff waters left from the irrigation of lands within Carson Division of the Newlands Irrigation Project, with a priority of 1948.

XI

The Washoe Project Act of August 1, 1956, 70 Stat. 775, authorizes the Secretary of the Interior to construct, operate, and maintain the Washoe Reclamation Project for purposes of irrigation of lands in the Carson and Truckee River Basins, for providing drainage service to lands therein, controlling floods, providing hydroelectric power and for other beneficial purposes. The Act also provides for the development of the fish and wildlife resources of the project area, including facilities to permit increased water releases from Lake Tahoe and restoration of the Pyramid Lake fishery. Under the provisions of this Act, Stampede Reservoir has been constructed in California on the Little Truckee River, a tributary of the Truckee River.

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XII

It is the contention of the United States that nothing in the Reclamation Act, the Migratory Bird Conservation Act, or the Washoe Project Act authorizes any diversion of water from the Truckee River that would interfere with the right of the United States, for the benefit of the Pyramid Lake Tribe of Indians, to the use of sufficient waters of the Truckee River to fulfill the purposes for which the Pyramid Lake Reservation was created, including the maintenance and preservation of Pyramid Lake, the maintenance of the lower reaches of the Truckee River as a natural spawning ground for fish and other purposes beneficial to and satisfying to the needs of the Pyramid Lake Indians.

XIII

The United States owns lands within the watershed of the Truckee River which are parts of the Eldorado, Tahoe and Toiyabe National Forests in California and Nevada. The lands within the Eldorado National Forest were withdrawn from the public domain and reserved for national forest use by Presidential Proclamations dated July 28, 1910, September 28, 1928, and September 13, 1945. The lands within the Tahoe National Forest were withdrawn from the public domain and reserved for national forest use by Presidential Proclamations dated April 13, 1899, October 3, 1905, September 17, 1906, March 2, 1909, July 28, 1910, and July 12, 1926. The lands within the Toiyabe National Forest were withdrawn from the public domain and reserved for national forest use

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by Presidential Proclamations dated March 1, 1907, April 15, 1907, February 20, 1909, and December 10, 1910. Reservation of these lands for national forest use also reserved for the United States the unappropriated waters in and on such lands to the extent necessary for the requirements of the forests.

XIV

The United States claims a right to the use of the waters of the Truckee River and its tributaries in the national forests to the extent required for the purposes of the forest reservations with priority dates as of the dates these lands were withdrawn for national forest use.

XV

The United States claims rights to the use of waters reserved as public water holes by Executive Order dated April 17, 1926, pursuant to the Act of December 29, 1916, as amended, 43 U.S.C. 300, with a priority date of April 17, 1926; and to hot springs and mineral springs reserved for curative purposes by Executive Order dated July 7, 1930, pursuant to the Act of March 3, 1925, 43 U.S.C. 971, with a priority date of July 7, 1930.

XVI

The United States claims a right to the use of waters in and on the public lands at the various wells, ponds, and other places of use where water of the Truckee River system has heretofore been put to beneficial use by the federal government to the extent

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of such use, with priorities as of the dates these wells, ponds and other places of use on the public lands were first initiated.

XVII

On February 3, 1913, the United States brought an action entitled *United States v. Orr Water Ditch Co., et al.* (Equity No. A-3) in the United States District Court for the District of Nevada, to determine the quantity of water the United States could divert from the Truckee River for the Newlands Project, to adjudicate the claims of numerous Nevada claimants, and to assert a right to the use of Truckee waters, for irrigation on the Pyramid Lake Indian Reservation. Neither the State of Nevada, the State of California, nor any California water right holders were parties to the suit. Neither an equitable apportionment between California and Nevada nor rights to water for the maintenance and preservation of Pyramid Lake and for other purposes beneficial to the Indians as set forth in Paragraph VII of this complaint nor the other federal rights asserted in Paragraphs XIV, XV and XVI were at issue in the suit.

XVIII

On September 8, 1944, a decree was entered in the case of *United States v. Orr Water Ditch Co., et al., supra.* This decree recognized, subject to prior rights, the right of the United States to use Truckee water for the Newlands Project, recognized numerous rights within the State of Nevada to the use of

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waters from the Truckee River and recognized the right of the United States to use Truckee water for irrigation of lands on the Pyramid Lake Indian Reservation with a priority date of December 8, 1859. It is the position of the United States that this decree does not foreclose recognition of the additional rights now asserted by the United States.

XIX

Without a determination, however, by this Court of the relative priorities, as between the rights adjudicated in the *Orr Ditch* decree and rights and uses not asserted in that action and not covered by that decree, the United States cannot properly determine its obligations, contractual or otherwise, pertaining to irrigation and reclamation projects using waters of the Truckee River and cannot adequately protect its rights and those of the Pyramid Lake Paiute Indians to the use of waters of the Truckee River.

XX

The States of California and Nevada have negotiated a proposed interstate compact for the apportionment between the two States of waters of the Truckee, Carson, and Walker Rivers and Lake Tahoe. This proposed interstate compact has been approved by the legislatures of both States. A bill designated as H.R. 6078 which would grant the consent and approval of Congress to this interstate compact was introduced in the House of Representatives on March 15, 1971, and was referred to the Committee on the Judiciary. On information and belief, it is alleged that no action

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has been taken on this bill since its referral to the Committee on the Judiciary.

XXI

Under the provisions of the proposed California-Nevada Interstate Compact, there would be allotted to Nevada for use on the Pyramid Lake Indian Reservation only the amount of water provided in the 1944 *Orr Ditch* decree. The compact further provides that all federal uses of water shall be within the allocations of the State where the use is made and that the allocations of water between the States shall be binding upon the United States. The compact also provides that nothing in the compact shall abridge, limit or derogate from the use of water within allocations to each State that could be established under state or federal law had the compact not been adopted. Approval of the compact would not obviate the necessity for this suit to adjudicate the rights asserted herein by the United States and to apportion remaining waters in light of those rights.

XXII

The United States has attempted without success to negotiate changes in the proposed compact that would adequately recognize and protect the rights of the United States.

XXIII

The States of California and Nevada have refused to recognize any rights of the United States or the

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Pyramid Lake Paiute Tribe of Indians to the use of waters of the Truckee River for the maintenance and preservation of Pyramid Lake; both States have issued permits for the appropriation of waters from the Truckee River which are in derogation of rights to the use of the water for the maintenance of Pyramid Lake; and the aforementioned rights are currently being violated.

XXIV

There is an urgent need for a determination of the rights of the United States claimed herein and for an equitable apportionment of the remaining waters between the States of California and Nevada so that any decree rendered in favor of the United States can be enforced against the appropriate State.

WHEREFORE the United States prays that the defendants be required to answer this complaint and that a decree be entered declaring the right of the United States for the benefit of the Pyramid Lake Paiute Tribe of Indians to the use of sufficient waters of the Truckee River to fulfill the purposes for which the Pyramid Lake Reservation was created, including the maintenance and preservation of Pyramid Lake and the maintenance of the lower reaches of the Truckee River as a natural spawning ground for fish and other purposes beneficial to and satisfying to the needs of the Pyramid Lake Indians, such use to be with a priority of November 29, 1859;

The United States further prays that after declaring such right this Court appoint a master to set

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the measure of this right in acre-feet per year and rate of flow, and to make such findings of fact and law as the Court may require as to the other claims asserted herein; and that this Court decree the right of the United States to the use of sufficient waters in and on national forest lands within the Truckee River watershed to satisfy the purposes of the national forests with priority as of the dates those lands were withdrawn for national forest use, the right of the United States to waters reserved as public water holes and hot springs with priority as of the dates of such reservation, the right of the United States to the use of waters in and on public lands where the waters have heretofore been put to beneficial use on those lands to the extent of such use and with priority as of the dates the uses of such waters were first initiated, and the right of the United States to the use of the runoff waters from the Newlands Irrigation Project for use in the Stillwater Wildlife Refuge with a 1948 priority date.

The United States further prays that this Court apportion the use of the waters of the Truckee River system not required for satisfaction of the rights of the United States between the States of California and Nevada, and for such further relief as may be proper in the premises.

ERWIN N. GRISWOLD,
Solicitor General.

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In the Supreme Court of the United States

OCTOBER TERM, 1972

No. Original

UNITED STATES OF AMERICA, PLAINTIFF.

v.

STATES OF NEVADA AND CALIFORNIA

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE
COMPLAINT

JURISDICTION

This controversy between the United States and the States of Nevada and California is within the original jurisdiction of this Court under Article III, Section 2 of the Constitution of the United States and 28 U.S.C. 1251(b) (2).

STATEMENT

The purpose of this litigation is to establish the right of the United States to the use of a portion of the waters of the Truckee River system for the maintenance of Pyramid Lake and for the other purposes shown in the complaint. The facts alleged are

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set forth in some detail in our complaint. Essentially they are as follows:

1. The Truckee River system originates in the Sierra Nevada Mountains in the State of California. It flows into Lake Tahoe and it provides the only outlet stream of Lake Tahoe. After leaving Lake Tahoe the Truckee River flows approximately 85 miles through California and Nevada and empties into Pyramid Lake in the State of Nevada. It is the major source of water for Pyramid Lake.

On November 29, 1859, the United States set aside an area including Pyramid Lake and the lower reaches of the Truckee River as a reservation for the Pyramid Lake Paiute Indians (Apps. A, B, *infra*) One of the principal reasons for reserving this area for these Indians was that the lake and the part of the river included in the Reservation provided the traditional fishing grounds upon which the Indians had long relied for their sustenance. *United States v. Sturgeon*, 27 Fed. Cas. 1357 (No. 16,413) (D. Nev.), affirmed, 27 Fed. Cas. 1358; *United States v. Walker River Irr. Dist.*, 104 F.2d 334 (C.A. 9) (see App. A, *infra*).

Diversions and uses of large quantities of water from the Truckee River and its tributaries for irrigation, municipal use and other purposes, mainly within the Carson River watershed, have resulted in insufficient water reaching Pyramid Lake to maintain its water level. The lake has dropped some 70 feet since 1906, when major diversions began. This has caused virtual destruction of the fish spawning areas

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in the lower reaches of the Truckee River and a serious depletion of the fish in the lake. Moreover, increased salinity, as the lake drops, threatens total destruction of the lake as a habitat for Lahontan Cutthroat Trout and Cui-ui Lakesuckers, the principal native fish of the lake, both of which are unique to this area and have been placed on the Endangered Species List.

2. The Newlands Reclamation Project, authorized by the Secretary of the Interior in 1903 under the provisions of the Reclamation Act of 1902, 32 Stat. 388, receives a large portion of the water diverted from the Truckee River. The irrigation project works are owned by the United States, but operated by the Truckee-Carson Irrigation District. The reclamation laws did not establish ownership of the water made available by the project nor set the total amounts that could be diverted. Consequently, in 1913, the United States brought an action entitled *United States v. Orr Water Ditch Co.*, Equity No. A-3, in the United States District Court for the District of Nevada to determine the quantity of water the United States could divert for the Newlands Project, to adjudicate the claims of numerous Nevada claimants and to assert a right to use of Truckee waters for irrigation on the Pyramid Lake Indian Reservation.

In 1944 the court entered a decree¹ in which it recognized that in the establishment of the Reservation the government by implication reserved a reason-

¹ The decree is quoted in part at App. D, *infra*. A copy of the entire decree has been lodged with the Clerk of this Court.

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able amount of water for the use of the reservation Indians for irrigation with a priority date of December 8, 1859.² The decree also specified a maximum allowable diversion of Truckee water for the Newlands project and recognized the water rights of the various Nevada claimants. The government did not then assert a right to sufficient water to maintain the level of Pyramid Lake, to maintain the lake and the lower Truckee as a fishery, for domestic and other non-irrigation uses for the Indians, or for the other federal uses set forth in our complaint. Neither the State of Nevada, the State of California nor any California water users were parties to the suit; nor was an equitable apportionment between the two States sought.

3. Subsequent to the *Orr Ditch* decree, Congress authorized the Washoe Project (Act of August 1, 1956, 70 Stat. 775), under which further works have been created in the Truckee system and which specifically provides for increased water releases from Lake Tahoe and for restoration of the Pyramid Lake fisheries.

4. The States of Nevada and California have negotiated a proposed interstate compact for the apportionment between them of the waters of the Truckee, Carson and Walker Rivers and Lake Tahoe. A bill (H.R. 6078, 92d Cong., 1st Sess.), which would grant the consent and approval of Congress to this

² The correct date is November 29, 1859. See *United States v. Walker River Irr. District*, 104 F. 2d 334 (C.A. 9); App. B, *infra*.

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proposed compact has been introduced in the House of Representatives but no action has been taken on it since its referral to the Committee on the Judiciary. This proposed compact does not recognize the rights of the United States asserted in this suit; nor, however, does it prohibit judicial establishment of these rights.

The United States has attempted without success to negotiate changes in the proposed compact which would adequately recognize and protect the rights claimed herein. The States have refused to recognize a federal right to the use of water for the maintenance and preservation of Pyramid Lake in the absence of a judicial determination of such a right. Both California and Nevada have issued permits appropriating waters of the Truckee river system in direct conflict with the supply of sufficient water for the maintenance and preservation of the lake.

ARGUMENT

I

THE COMPLAINT ALLEGES FACTS ENTITLING THE UNITED STATES TO RELIEF

A. The United States Has Reserved Rights To The Use Of Waters Of The Truckee River System

It has long been established that the United States may withdraw waters on the public domain from private appropriation and reserve them for federal uses. *United States v. Rio Grande Irrigation Company*, 174 U.S. 690; *Winters v. United States*, 207 U.S. 564. A federal reservation of rights to the use of waters

may be express, as in the case of the public water holes and hot springs mentioned in paragraph XV of our complaint, or implied from the withdrawal of lands from the public domain for particular purposes which require the use of water for their fulfillment. *Arizona v. California*, 373 U.S. 546; *United States v. District Court in and for the County of Eagle*, 401 U.S. 520. The decision of this Court in *Arizona v. California*, *supra*, has firmly established, as to both national forests and Indian reservations, that when lands are withdrawn from the public domain for such purposes, whether or not any mention of water rights is made in the Act withdrawing the lands, the reservation of sufficient waters to satisfy the purpose for which the lands were withdrawn is implicit.

The establishment of Pyramid Lake Indian Reservation is a classic example of such reservation by implication. The boundaries of the Reservation were drawn to include all of Pyramid Lake and the lower reaches of the Truckee River because the Indians lived on the shores of the lake and river and relied on fish from the lake (which spawned in the river) for their sustenance. See *United States v. Walker River Irr. Dist.*, *supra*, 104 F.2d at 338; *United States v. Sturgeon*, *supra*. The establishment of the Reservation, therefore, impliedly reserved sufficient water from the Truckee River to maintain the character of the lake as an abundant fishery. *Winters v. United States*, *supra*; *Alaska Pacific Fisheries v. United States*, 248 U.S. 78.

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B. No Laws Authorizing The Construction Of Irrigation Projects Have Diminished The Right To Water For Maintenance Of Pyramid Lake

The Newlands Reclamation Project was constructed under the authority of the Reclamation Act of 1902, 32 Stat. 388. Under this Act, Congress created the Reclamation Fund and appropriated to that fund the proceeds from the sale of public lands in certain States and Territories, including Nevada, for use by the Secretary of the Interior for projects for the reclamation of arid lands in those areas. There is nothing in the language of the Reclamation Act of 1902 or any of its amendments that can reasonably be construed to authorize the taking of waters of the Truckee River, previously reserved for the Pyramid Lake Indian Reservation, for use on the Newlands Reclamation Project. See *United States v. Santa Fe Pacific R. Co.*, 314 U.S. 339, 354; *Choate v. Trapp*, 224 U.S. 665, 675.

The Washoe Project Act of August 1, 1956 (70 Stat. 775, 43 U.S.C. 614), specifically authorized construction and operation of the Washoe Reclamation Project. This legislation also provides for the development of fish and wildlife resources of the project area, including facilities to permit increased releases of water from Lake Tahoe and restoration of the Pyramid Lake fishery. 43 U.S.C. 614c. Thus, rather than diminishing the right to water for the maintenance and preservation of Pyramid Lake, the Act protects and reinforces this right. And we know of no federal legislation that can reasonably be construed as dimini-

ishing the right to the use of water from the Truckee River System for the maintenance and preservation of Pyramid Lake.

C. The *Orr Ditch* Decree Did Not Extinguish The Right To Water For Maintenance Of Pyramid Lake

The fact that the United States did not assert in the *Orr Ditch* suit a right to the use of sufficient waters from the Truckee River system to maintain Pyramid Lake and preserve it as a fishery, and for the other federal uses asserted in the present complaint, did not extinguish those rights. The *Orr Ditch* suit was not an attempt at a complete stream adjudication. Although the major sources of the water were in California, neither the State of California nor California water users were parties to the action. A complete and equitable apportionment of the waters of this river system can only be made in a suit in which both States are joined and downstream uses can be provided for in coordination with upstream uses and releases.

Moreover, in 1913 when the *Orr Ditch* suit was brought the now dramatic decline in the level of Pyramid Lake had hardly begun and the need for asserting a right for sufficient water to maintain the Lake had not become apparent. Even by 1944, the date of the so called "final decree," although some destruction of fish life caused by the drop in the level of the lake and insufficient water in the lower reaches of the river to permit spawning had occurred, it had not been fully appreciated by the government. It is

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thus understandable that the *Orr Ditch* litigation was addressed solely to the questions that then seemed pressing, a determination of individual water rights, primarily for irrigation, within Nevada, with no focus on California water releases or preservation of residual water for Pyramid Lake.

Now, the authorization and construction of the Washoe project, increased and often wasteful water use, and the approaching but still reversible destruction of Pyramid Lake in breach of faith with the Pyramid Lake Indians, all call for a comprehensive adjudication of the United States' rights in these waters and an equitable apportionment of the remaining waters between the States of Nevada and California.

II

THIS IS AN APPROPRIATE CASE FOR THE EXERCISE OF THE ORIGINAL JURISDICTION OF THIS COURT

1. This Court has original jurisdiction of this case under Article III, Section 2 of the Constitution of the United States and 28 U.S.C. 1251(b)(2). The case eminently justifies the exercise of that jurisdiction.

The Court has traditionally exercised its original jurisdiction in cases brought by the United States against a State or States to quiet the United States' title to property. See, *e.g.*, *United States v. Oregon*, 295 U.S. 1, 295 U.S. 701; *United States v. Utah*, 283 U.S. 64, 283 U.S. 801; *United States v. Texas*, 337

U.S. 902, 339 U.S. 707. The primary relief we ask in this case is such a quieting of the United States' title to its interest in the waters at issue. And, because in this case the waters are part of an interstate stream system, this is the only court in which jurisdiction can be obtained over all of the necessary parties to grant the relief so urgently needed if Pyramid Lake is to be saved. The United States' water rights in Nevada are dependent on restrained uses and timely releases in California as well as Nevada.

The procedure urged here, a suit to establish the rights of the United States in certain waters and for an equitable apportionment of the remainder between the two States (leaving to each State as *parens patriae* its own apportionment within its borders between non-federal users) is one with which this Court is familiar and which has been successfully used in similar cases in the past. See *Arizona v. California*, 373 U.S. 546; *Wyoming v. Colorado*, 259 U.S. 419 (decision on merits), 353 U.S. 953 (decree vacated and new decree entered).

In previous original actions concerning water rights brought by States in this Court, the United States has intervened as a party plaintiff (see *Wisconsin v. Illinois*, 361 U.S. 996, 388 U.S. 426; *Arizona v. California, supra*), and rights of the United States were determined in those actions. In *Texas v. New Mexico*, 352 U.S. 991, the Court dismissed an original suit concerning the use of waters of the Rio Grande River because of the absence of the United States as an indispensable party. The only aspect of the pres-

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ent suit that is in any way unusual is that the United States, rather than a State, asks for an equitable apportionment between the two States of the water remaining after federal uses are recognized. But this is entirely proper and, indeed, necessary so that any decree rendered in favor of the United States can be enforced against the appropriate State and to enable the water rights in this stream system to be settled without multiple litigation and in a consistent and workable manner.

This Court has stated that settlement of disputes with respect to interstate waters by interstate compact approved by Congress is preferable to settlement by the Court. *Colorado v. Kansas*, 320 U.S. 383; *New York v. New Jersey*, 256 U.S. 296, 313. Here, however, the States and the federal government, after considerable effort, are unable to agree upon a compact that would apportion the waters of the Truckee River while recognizing the federal rights claimed in this suit. The compact currently proposed by the two States does not reach the issues raised in this suit, and no settlement by compact is realistically possible until this Court has ruled upon the rights herein asserted by the United States.

2. Paragraph XXIV of our complaint asks that this Court enter a decree declaring the right of the United States for the benefit of The Pyramid Lake Tribe of Indians to the use of sufficient waters of the Truckee River to fulfill the purposes for which the Pyramid Lake Reservation was created, including the maintenance and preservation of Pyramid Lake

and the lower reaches of the Truckee as a fishery. We then ask that a master be appointed to rule on the other matters raised in the suit and to set the various water rights in acre feet per year and rates of flow. We ask for a preliminary ruling by the Court before a master is appointed for three reasons. First, there is, we believe, no basis for dispute concerning the establishment of the Reservation or the fact that the Indians for whom it was established relied upon fishing in Pyramid Lake as their principal source of food and that, to the extent they can, the reservation Indians still rely on the Lake for their livelihood.³ It follows as a proposition of law, we submit, that the government's establishment of the Reservation tacitly reserved sufficient waters for the maintenance and preservation of the Lake and lower River as a fishery. Second, an expeditious ruling by this Court on this proposition will assist the government and the Pyramid Lake Tribe to enforce strict compliance with existing decrees to insure maximum flowage to the Lake pending a final judgment in this suit. Third, once this basic issue is settled by decree, it may then be possible for the other issues in the suit to be settled by mutual agreement.

³ See Appendix A, *infra*.

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CONCLUSION

For the reasons stated, the motion for leave to file the complaint should be granted.

Respectfully submitted.

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SEPTEMBER 1972.

APPENDIX A

History of Establishment of Pyramid Lake Reservation quoted from *United States v. Walker River Irr. District*, 104 F.2d 334, 338-339 (C.A. 9).

The Walker River Indian Reservation was set aside by departmental action on November 29, 1859 for the use of the Pahute tribe. * * * * On November 26, 1859, F. Dodge, agent for the Indians in Utah Territory, of which Nevada was then a part, wrote the Commissioner of Indian Affairs suggesting that the northwest part of the valley of the Truckee River, including Pyramid Lake, and the northeast part of the valley of Walker's River, including the lake of the same, be reserved for the Indians of his agency. The localities and boundaries of the proposed reservations were indicated on an accompanying map. "These," stated the letter, "are isolated spots, embracing large fisheries, surrounded by mountains and deserts, and will have the advantage of being their home from choice."¹ The Commissioner of

¹ Allotments to individual Indians on the Walker River reservation were made in 1906 under the act of May 27, 1902, 32 Stat. 260 and the General Allotment Act.

¹ Continuing, the agent observed that "the Indians of my agency linger about the graves of their ancestors—but the game is gone', and now, the steady tread of the white man is upon them. The green valleys too, once spotted with game 'are not theirs now.' Necessity make them barter the virtue of their companions as a commodity of the market and the bitter contemplation burns in their bosoms the stern reality of their fate. Driven by destitution they seek refuge in crime, and show themselves unsparing because they have been spared.

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Indian Affairs thereupon wrote the Secretary of the Interior, calling his attention to Dodge's letter, and stating, among other things, "the tracts selected by the Agent, embrace but a small portion of land suited for agricultural purposes, yet, it is believed that there will be a sufficiency for the sustenance of the Washoe and Pahute tribes of Indians, in connection with the fish which they may obtain from Pyramid and Walker Lakes, and with a view to secure suitable homes for these Indians where they can be protected from the encroachments of the whites, I have the honor to suggest that, with your concurrence, the subject may be laid before the President for his consideration, with a recommendation that the tracts of country indicated on the map may be set apart and reserved from sale or settlement, for Indian use."

The Indian Commissioner on November 29, 1859 wrote the Commissioner of the General Land Office, suggesting the propriety and necessity of reserving these tracts for Indian use, and requesting that the Surveyor General of Utah Territory be directed to respect the reservations on the plats of survey when the public surveys should be extended over them, and that in the meantime the local land offices, as established, be instructed to respect the reservations on their books. On December 8 of the same year

¹ [Continued]

"I sincerely hope that those asylums will be made for them, where they can be free from the influence of the 'White Brigands' who loiter about our great overland mail and emigrant routes—using them as their instruments to rob and plunder our citizens."

the Commissioner of the General Land Office wrote the Surveyor General in Salt Lake City, instructing him to reserve for Indian purposes the two tracts described and indicated on an enclosed map.

[8, 9] The Walker River reservation as originally defined was surveyed within a few years, and in 1874 President Grant issued an executive order setting the lands apart from the Pahute and other Indians residing thereon. The action taken in November, 1859 initiated the establishment of the Walker River Indian Reservation. The acts of the heads of departments are the acts of the executive. *Wilcox v. Jackson*, 13 Pet. 498, 513, 10 L.Ed. 264; *Wolsey v. Chapman*, 101 U.S. 755, 769, 25 L.Ed. 915. The subsequent proclamation of the President merely gave formal sanction to an accomplished fact. *Northern Pac. Ry. Co. v. Wismer*, 246 U.S. 283, 38 S.Ct. 240, 62 L.Ed. 716; *Minnesota v. Hitchcock*, 185 U.S. 373, 385, 389, 390, 22 S.Ct. 650, 45 L.Ed. 954. That this was true of the Pyramid Lake reservation, created at the same time and in the same manner as that on the Walker River, was formally determined by the Department of the Interior in *Central Pacific Ry. Co.*, 45 L.D. 502.

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APPENDIX B

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,*November 29, 1859.*

SIR: My attention has been called, by a letter of the 25th instant from F. Dodge, Esq., agent for the Indians in Utah Territory, now in this city, to the consideration of the propriety and necessity of reserving from sale and settlement, for Indian use, a tract of land in the northern portion of the valley of the Truckee River, including Pyramid Lake, and a tract in the northeastern part of the valley of Walkers River, including Walkers Lake, as indicated by the red coloring upon the inclosed map, and, fully concurring in the suggestion of Agent Dodge respecting this subject. I have to request that you will direct the surveyor general of Utah Territory to respect said reservations upon the plats of survey when the public surveys shall have been extended over that part of the Territory, and in the meantime that the proper local land officers may be instructed to inspect the reservations upon the books of their offices when such offices shall have been established.

Very respectfully, your obedient servant,

A. B. GREENWOOD, *Commissioner.*

HON. SAMUEL A. SMITH,
Commissioner General Land Office.

APPENDIX C

Executive Order, March 23, 1874:

“Executive Mansion, March 23, 1874.

“It is hereby ordered that the tract of country known and occupied as the Pyramid Lake Indian Reservation in Nevada, as surveyed by Eugene Monroe in January, 1865, and indicated by red lines, according to the courses and distances given in tabular form on accompanying diagram, be withdrawn from sale or other disposition and set apart for the Pah-Ute and other Indians residing thereon.

U. S. Grant.”

APPENDIX D

Extract from "Final Decree," *United States v. Orr Water Ditch Company, et al.*, in the District Court for the United States in and for the District of Nevada—in equity, Docket No. A.3, filed September 8, 1944, pp. 10-11.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

That the parties, * * * * above and hereinafter named * * * * are, * * * * hereby adjudged to be the owners of the water rights hereinafter specified and set forth and entitled and allowed to divest and use, from the Truckee River and its tributaries and from the streams, springs, drain and waste waters hereinafter mentioned, and by and through their respective ditches, canals, flumes, dams and reservoirs, for the irrigation of their respective hereinafter described lands, for generating electricity and power, for municipal purposes, for supplying the people living in cities and towns, for reclamation of arid lands, for watering livestock, for domestic uses and other beneficial purposes, water in the respective amounts and subject and according to the respective dates of appropriation and priorities as hereinafter stated, found and allowed.

TRUCKEE RIVER DIVERSIONS

Government Rights

INDIAN DITCH

Claim No. 1. By order of the Commissioner of the General Land Office on December 8, 1859,

the lands comprising the Pyramid Lake Indian Reservation were withdrawn from the public domain for use and benefit of the Indians and this withdrawal was confirmed by order of the President on March 23, 1874. Thereby and by implication and by relation as of the date of December 8, 1859, a reasonable amount of the water of the Truckee River, which belonged to the United States under the cession of territory by Mexico in 1848 and which was the only water available for the irrigation of these lands, became reserved for the needs of the Indians on the reservation.

For the irrigation of 3130 acres of Pyramid Lake Indian Reservation bottom lands, plaintiff, the United States of America, is entitled and allowed to divert from the Truckee River through the Indian Ditch, the intake of which is on the left bank of the river in Section 18, T. 22 N., R. 24 E., Mount Diablo Base and Meridian, not exceeding 58.7 cubic feet of water per second to an amount not exceeding 14,742 acre feet of water in any calendar year with a priority of December 8, 1859; provided the amount of water so to be diverted shall not exceed a flow of one miner's inch, or one-fortieth of one cubic foot per second per acre for the aggregate number of acres of this land being irrigated during any calendar year and the amount of water applied to the land after an estimated transportation loss of 15 percent, shall not exceed 85-100 of an inch or 85-100 of one-fortieth of one cubic foot per second per acre for the total number of acres irrigated, and provided that the amount of water so diverted during any such year shall not exceed 4.71 acre feet per acre for the aggregate num-

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ber of acres of this land being irrigated during that year, and further provided that the amount of water applied to the land shall not exceed four acre feet per acre for the aggregate number of acres of this land being irrigated during any calendar year.

This water is allowed for the United States and for the Indians belonging on said reservation and for their use and benefit and is not allowed for transfer by the United States to homesteaders, entrymen, settlers or others than the Indians in the event that said lands are released from the reservation or are thrown open to entry or other disposal than assignment or transfer to the Indians.

Claim No. 2. In addition to water for the above mentioned 3130 acres of Pyramid Lake Indian Reservation bottom lands, the Government is hereby and will be allowed to divert water from the Truckee River, with a priority of December 8, 1859, to the amount of one-fortieth of one cubic foot per second per acre for the irrigation of 2745 acres of Pyramid Lake Indian Reservation bench lands. The water so allowed for bench lands may be diverted from the Truckee River through the Truckee Canal or any other ditch now or hereafter constructed as the plaintiff may desire or authorize; provided that the amount of water for bench lands shall not exceed during any calendar year 5.59 acre feet per acre diverted from the river, nor exceed during any calendar year 4.1 acre feet per acre applied to the lands, for the aggregate number of acres of this land being irrigated during any year.

This water is allowed for the United States and for the Indians belonging on said reservation and for their use and benefit and is not allowed for transfer by the United States to homesteaders, entrymen, settlers or others than the Indians in the event that said lands are released from the reservation or are thrown open to entry or other disposal than assignment or transfer to the Indians.

DERBY DAM AND TRUCKEE CANAL

Claim No. 3. Under the Reclamation Act of June 17, 1902, the United States, acting by the Secretary of the Interior, on July 2, 1902, withdrew from public entry, excepting under the homestead laws in accordance with the provisions of the Act, the lands required for the Government's first reclamation project, now known as the Newlands Project. Thereupon and with due diligence the United States proceeded with the construction of the Derby Dam across the Truckee River in the SW $\frac{1}{4}$ of Section 19, in T. 20, N., R. 23, E., Mount Diablo Base and Meridian, and with the construction of the Truckee Canal, with a carrying capacity of 1,500 cubic feet of water per second, running from this dam a distance of 31 miles to the Lahontan Reservoir on the Carson River, and with the construction of the Lahontan Reservoir, with a storage capacity of 290,000 acre feet, and with the construction of about 250 miles of lateral and sub-lateral irrigation canals sufficient for carrying water for the irrigation of 151,000 acres. On April 30, 1919, the Government had expended for this project \$6,252,000.00. The lands so withdrawn for

reclamation are naturally dry and arid and without the application of water are of little or no value, but with irrigation will produce valuable crops and furnish homes and support for a large population.

Subject to prior appropriations and vested rights permitted and confirmed by the Act of Congress of July 26, 1866, the plaintiff is entitled and allowed to divert, with a priority of July 2, 1902, through the Truckee Canal 1,500 cubic feet of water per second flowing in the Truckee River for the irrigation of 232,800 acres of lands on the Newlands Project, for storage in the Lahontan Reservoir, for generating power, for supplying the inhabitants of cities and towns on the project and for domestic and other purposes, and under such control, disposal and regulation as the plaintiff may make or desire, provided that the amount of this water allowed or used for irrigation shall not exceed, after transportation loss and when applied to the land, 3.5 acre feet per acre for the bottom lands, nor 4.5 acre feet per acre for the bench lands under the Newlands Project.

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