

**Hearing
before the
United States
Commission on Civil Rights**

**AMERICAN INDIAN ISSUES
IN THE STATE OF WASHINGTON**

**HEARING HELD IN
SEATTLE,
WASHINGTON**

OCTOBER 19-20, 1977

VOLUME I: Testimony

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U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to denial of equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to denials of equal protection of the laws because of race, color, religion, sex, or national origin;
- Submit reports, findings, and recommendations to the President and Congress.

MEMBERS OF THE COMMISSION

Arthur S. Flemming, *Chairman*
Stephen Horn, *Vice Chairman*
Frankie M. Freeman
Manuel Ruiz, Jr.
Murray Saltzman
Louis Nuñez, *Acting Staff Director*

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UNITED STATES COMMISSION

ON CIVIL RIGHTS

Wednesday, October 19, 1977

PRESENT: Arthur S. Flemming, Chairman; Frankie Freeman, Commissioner; Louis Nunez, Deputy Staff Director; Richard Baca, General Counsel; Paul Alexander, Assistant General Counsel; Idelle Howitt, Counsel; Marvin Schwartz, Counsel; and Michael D. Walker, Counsel.

PROCEEDINGS

CHAIRMAN FLEMMING. I'll ask the hearing to come to order.
[The clerk and reporter were sworn.]

CHAIRMAN FLEMMING. The function of the U.S. Commission on Civil Rights is to investigate deprivation of equal protection of the law and to submit its findings to the Congress and to the President along with the recommendations for corrective actions. To enable the Commission to fulfill these duties, the Congress has empowered it to hold public hearings, and issue subpoenas for the attendance of witnesses and for the production of documents.

This hearing is being held under the authority of the Civil Rights Act of 1957 as amended. As required by law, notice of the hearing was published in the *Federal Register* on September 15, 1977. A copy of this notice will be introduced into the record at this point as Exhibit No. 1.

The purpose of this hearing is to listen to evidence relative to Indian tribes and tribal people and non-Indian governments and people and also to consider evidence relative to Indian governments and non-Indian governments working together to arrive at constructive solutions of common problems.

The Commission on Civil Rights is an independent bipartisan agency of the U.S. Government established by Congress in 1957. Its duties are the following:

To investigate sworn allegations that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, or national origin;

To study and collect information regarding legal developments which constitute denial of equal protection of the laws under the Constitution in such fields as voting, education, housing, employ-

ment, and use of public facilities, transportation, or in the administration of justice;

To serve as a national clearinghouse for information with respect to denial of equal protection of the laws because of race, color, sex, religion, or national origin and, finally, to investigate sworn allegations of vote fraud in Federal elections.

The session we begin today will be a public session. The majority of the witnesses we will hear have been subpoenaed by the Commission and the schedule, as you note from the agenda, has been planned in advance. There will be, however, on Thursday afternoon, a session at which persons who have not been subpoenaed but who feel they have relevant testimony may appear and speak.

Under the law under which we operate, the Chairman of the Commission is authorized to designate two members of the Commission to hold a public hearing, provided both political parties are represented. In connection with this hearing, I am joined by Commissioner Freeman. Commissioner Freeman is a resident of St. Louis. She has served on the U.S. Commission on Civil Rights longer than any other member, having been appointed by President Johnson and having served continuously. She is a recognized outstanding trial lawyer from St. Louis. I am happy to recognize her at this time so she can acquaint you with the rules and the procedures which will be followed in connection with this hearing. Commissioner Freeman.

COMMISSIONER FREEMAN. Thank you, Dr. Flemming. At the outset I should emphasize that the observations I am about to make on the Commission's rules constitute 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 briefly a special Commission procedure for testimony or evidence which may tend to defame, degrade, or incriminate any person. 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.

When we use the term "executive session," we mean a session in which only the Commissioners are present, in contrast to a session such as this, one in which the public is invited and present.

In providing for an executive or closed session for testimony which may tend to defame, degrade, or incriminate any person, 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 also wished to minimize damage to reputations as much as possible and to provide persons an opportunity to rebut unfounded charges before they were well publicized.

Therefore, the Commission, when appropriate, convenes in executive session prior to the receipt of anticipated defamatory testimony.

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.

Next, if we find the testimony to be of insufficient credibility, or the opposition to it to be of sufficient merit, we may refuse to hear certain witnesses even though those witnesses have been subpoenaed to testify in public session. An executive session is the only portion of any hearing which is not open to the public.

The hearing which begins now is open to all and the public is invited and urged to attend all the open sessions. All persons who are scheduled to appear who live or work in Washington or within 50 miles of the hearing site 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 of his or her 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. After the witness has been questioned by the Commission, counsel may subject his or her client to reasonable examination within the scope of the questions asked by the Commission. He or she also may make objections on the record and argue briefly the basis for such objections.

Should any witness fail or refuse to follow any order made by the Chairman or the Commissioner presiding in his absence, his or her behavior will be considered disorderly and the matter will be referred to the U.S. Attorney for enforcement pursuant to the Commission's statutory powers. If the Commission determines that any witness' testimony tends to defame, degrade, or incriminate any person, that person or his or her counsel may submit written questions which in the discretion of the Commission may be put to the witness. Such person also has a right to request that witnesses be subpoenaed on his or her behalf. 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 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. The Commission should be immediately informed of any allegations relating to possible intimidation of witnesses. Let me emphasize that we consider this to be a very serious matter, and we will do all in our power to protect witnesses who appear at the hearing.

A copy of the rules which govern this hearing may be secured 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 ensuring 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 that 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.

With respect to the conduct of persons in this hearing room, the Commission wants to make clear that all orders by the Chairman must be obeyed. Failure by any person to obey an order by Dr. Flemming, or the Commissioner presiding in his absence, will result in the exclusion of the individual from this hearing room and criminal prosecution by the U.S. Attorney when required. The Federal marshals stationed in and around this hearing room have been thoroughly instructed by the Commission on hearing procedures and their orders are also to be obeyed.

This hearing will be in public session on Wednesday and Thursday of this week. The sessions will begin at 8:30 a.m. and will continue until 7 p.m. with a 1-hour break for lunch.

On Thursday, the final day of this hearing, the session will begin at 8:30 a.m. and continue to 5 p.m. The time between 5 p.m. and 7 p.m. has been set aside for testimony from persons who have not been subpoenaed but wish to testify. As noted by Chairman Flemming, persons wishing to appear at the open session should be in contact with members of the Commission's staff in Room 542 throughout today and until 12 o'clock noon Thursday. Such persons would be heard in the order in which they signed up. I wish to repeat, the time between 5 and 7 p.m. has been set aside for testimony for persons who have not been subpoenaed but wish to testify. Persons wishing to appear in the open session should be in contact with members of the Commission staff in Room 542 throughout today and until 12 noon tomorrow.

Thank you.

CHAIRMAN FLEMMING. Thank you very much, Commissioner Freeman.

STATEMENT OF PATRICIA ZELL

MR. BACA. Patricia Zell is going to do the next presentation on the Indians. Could you please identify yourself for the record, Dr. Zell?

DR. ZELL. Patricia Zell.

CHAIRMAN FLEMMING. Would you identify your position with the Commission?

DR. ZELL. I'm a consultant to the Commission.

The following material that I will present is a summary of the report that the staff has prepared for the Washington State Indian hearing.

There is a relatively consistent body of law whose origins flow from pre-Colonial America to present day. This body of law is neither well known nor well understood by the American public. This body of law, Federal Indian law, or more accurately United States constitutional law concerning Indian tribes and individuals, is unique and separate from the rest of American jurisprudence. Analogies to general constitutional law, civil rights law, public land law, and the like are misleading and often erroneous. Indian law is distinct. It encompasses Western European international law, specific provisions of the United States Constitution, pre-Colonial treaties, treaties of the United States, an entire volume of the United States Code, and numerous decisions of the United States Supreme Court and inferior Federal courts.

There are four basic concepts which one must understand in order to put current disputes and controversies in some perspective. The first of these is: Indian tribes are units of government with a special political relationship, a trust relationship with the United States Government.

In the 1830s the United States Supreme Court decided a series of cases which provides an analytical framework upon which Indian law rests today. In an 1831 case involving an attempt by the State of Georgia to impose its law on the Cherokee Nation, the Supreme Court held that the Cherokees and other tribes are domestic dependent nations. Thus it was recognized that tribes have both a nation status and a special relationship with the United States Government. In this decision, Chief Justice John Marshall discussed in some detail the political relationship of tribes with the Federal Government. The decision characterizes this special relationship, known as the trust relationship, as one which resembles that of a ward to his guardian. This fiduciary relationship has been consistently recognized by the Federal courts ever since and has been variously described as special, unique, moral, and solemn.

The trust relationship should not be confused with the making of treaties, a policy which the United States encouraged. The benefits of treaties to the United States were the political and military loyalty of the tribes to the United States against the European powers and the legal acquisition of land for white settlers. Today it is generally recognized that the United States has a trust relationship with Indian tribes. The exact parameters of this relationship are, however, not entirely clear and perhaps never will be. The trust relationship is an evolving dynamic doctrine which has been expanded over the years as changing times have brought changing issues.

There are three components to the trust relationship. They are the land, tribal self-government, and social services. The first, land, is the clearest and the one about which there is most agreement. Title to Indian land, both tribal and individual, is generally held in trust by the United States. The United States holds technical legal title while equitable title or the right to use the land is held by the beneficiary, the Indians. The trust lands are to be managed for the benefit of Indian owners. The Secretary of the Interior has been designated as the prime agent of the United States for management of the trust. It is, however, clear that the trust relationship extends to the entire Federal Government and is not limited to the Department of Interior.

The American Indian Policy Review Commission of the Congress of the United States recently reported that the purpose behind the trust is, and always has been, to ensure the survival and welfare of Indian tribes and people. This includes an obligation to provide those services required to protect and enhance Indian lands, resources, and self-government, and also includes those economic and social programs which are necessary to raise the standard of living and social well-being of the Indian people to a level comparable to non-Indian societies. This duty has long been recognized implicitly by Congress in numerous acts.

The American Indian Policy Review Commission found that Indian people are unanimous and consistent in their own view of the scope of the trust responsibility. Invariably they perceive the concept to symbolize the honor and good faith which historically the United States has always professed in dealing with the Indian tribes. Indian people have not drawn sharp distinction between services and custody of physical assets in their understanding of the application of the trust relationship. Consequently, at its core, the trust relationship has meant to them the guarantee of the United States that solemn promises of Federal protection for lands and people would be kept.

The second essential concept is that Indian tribes possess governmental powers. In *Worcester v. Georgia*, still the most important decision in Federal Indian law, Chief Justice Marshall

recognized that tribes were distinct, independent, political communities, having territorial boundaries within which their authority is exclusive. The doctrine of domestic tribal sovereignty recognized in *Worcester* is articulated by Felix Cohen in his *Handbook of Indian Law*, and he says:

An Indian tribe possesses all the powers of any sovereign State. These powers are subject to qualification by treaties and by express legislation of Congress but save as those expressly qualified full powers of internal sovereignty are vested in the Indian tribes and in their duly constituted organs of government.

As with any government whose power is inherent rather than delegated, it is not possible to precisely catalog all the powers that tribes retained. Some powers may not have been exercised in recent years, and others may become apparent only in the context of changing needs and circumstances. It is, however, safe to say that such tribal powers include most normal powers incidental to internal governmental functioning; for example, the power to define membership, the power to define and enforce criminal laws, the power to determine matters of family law, the power to regulate hunting and fishing, the power to tax; the power to zone and otherwise determine land use, and the power to determine the form of their governmental institutions.

The third important concept of Indian law was also established by the *Worcester* case holding that States do not have inherent powers within Indian reservations. The principle was further clarified by the Supreme Court in the 1886 case of *United States v. Kagama*. When the Supreme Court held that:

[Tribes] owe no allegiance to the States and receive from them no protection. Because of the local ill-feeling, the people of the States where they are found are often their deadliest enemies. From their very weakness and helplessness, so largely due to the course of dealings of the Federal Government with them and the treaties in which it has been promised, there arises a duty of protection. . . .

In a century and a half since *Worcester v. Georgia*, however, the complete bar against any State jurisdiction has been eroded largely through express grants of Congress of such jurisdiction from the United States Congress. For example, a line of cases has recognized State jurisdiction over crimes on reservations involving only non-Indians. Generally, these cases arose when tribal governments were not exercising their own inherent jurisdiction, and a different legal situation is presented where the tribe asserts an interest in regulating the conduct of non-Indians in its reservation area.

The Federal courts recently have been utilizing what is known as the infringement test to determine whether or not State action infringed on the right of reservation Indians to make their own laws and be ruled by them.

The final concept is that United States law views Congress as possessing plenary power with respect to Indian affairs. Although Indian tribes were not party to the United States Constitution, much of Federal Indian law is controlled by a single clause in the Constitution. That clause, known as the commerce clause, reads, "to regulate commerce with foreign nations and among the several States and with the Indian tribes." This single clause coupled with other implicit bases provided Congress with extraordinary power to legislate, free from most judicial scrutiny, in the area of Indian affairs.

The plenary power of Congress has both positive and negative consequences for Indian people. On the affirmative side, for example, pursuant to its trust and treaty obligations, Congress has legislatively created special protections and benefits for Indian tribes and tribal Indians. Some of this legislation, if designed for any other group or class of person, might otherwise be deemed unconstitutional discrimination.

On the negative side, Congress has used its power to unilaterally abrogate Indian treaties, to restrict the governmental powers of tribes, to subject tribes to State jurisdiction, and to terminate tribal political existence.

The phrase "civil rights," as commonly used, covers a range of rights and privileges that people perceive as belonging to them as citizens of the United States or perhaps as a matter of natural law or right. Some of the characterizations of civil rights, however, may be broader than the actual constitutional status of these rights.

One of the legal bases for what we call civil rights in the United States is the 14th amendment to the Constitution. This law says that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. The wording of the 14th amendment covers only actions of the State, but the Supreme Court interpreted the fifth amendment, which says that no person shall be deprived of life, liberty, or property without due process of law, to mean that the Federal Government in a similar situation cannot do what the 14th amendment bars the States from doing.

The word discrimination implies differing treatment of groups of people; however, not all and in fact probably most discrimination is not unconstitutional or necessarily evil. The provision of special educational benefits for veterans, for example, discriminates against nonveterans but is not unconstitutional. Similarly, the provision of

special benefits for Indians discriminates against non-Indians but, again, is not unconstitutional.

To determine what is illegal or unconstitutional discrimination, it is necessary for the courts to examine the scope of the equal protection clause. Generally equal protection issues arise when some Federal or State action, often legislative but not limited to legislation, treats one class of persons differently than other persons. In such cases courts have to decide why that particular classification of persons is being used, what kinds of rights are being affected, and why the government is making a distinction. The courts balance these three elements in deciding whether any kind of discrimination is unconstitutional and therefore wrong.

It is well established that the government has the right to classify its citizens, but courts look very carefully at certain kinds of classifications which suggest unconstitutional discrimination. Those suspect classifications include ancestry, race, and alienage. When the classification is suspect, courts will look at it with what they call strict scrutiny. Most of those classifications fail to pass constitutional muster. Courts will also look at classifications with strict scrutiny if fundamental rights are being affected. These rights include first amendment rights, the right of interstate travel, the right to vote, the right to procreate, and the right of privacy which justifies a woman's decision regarding her own abortion. If a government scheme involves a suspect classification or a fundamental right or both, the courts will require the government to justify its actions at the highest level.

Where does the classification of Indians fit within the legal concept of equal protection of the laws? The 14th amendment requires the States to apply their laws equally. The fifth amendment requires the Federal Government to do the same, but the Constitution has no provision regulating the conduct of tribal governments, and courts have ruled that the protections people are given against the Federal and State governments do not apply to the tribal governments.

Although many tribes already provided for equal rights in their constitution, Congress, in 1968, used its plenary power to pass the Indian Civil Rights Act. This act holds tribes to the same standards as those contained in the Bill of Rights and 14th amendment. It says that tribes may not deny to any person the equal protection of the law or deprive any person of liberty or property without due process of law. This law is not identical to constitutional guarantees but rather a modification of them. For example, tribes are prohibited from interfering with the free exercise of religion, but there is no ban on the establishment of religion.

It is not clear how far the traditional equal protection analysis applies to acts of tribal government. Given that race and ancestry are suspect classifications, it might seem logical that government favoring Indians over non-Indians would be unconstitutional but this

is not the case. This issue has been faced by the Supreme Court when it noted that all special Indian legislation was similarly situated. The Supreme Court stated that if these laws derive from historical relationships and explicitly designed to help only Indians were deemed invidious racial discrimination, an entire volume of the United States Code would be effectively erased and the solemn commitment of the government towards the Indians would be jeopardized. The Supreme Court also stated that as long as the special treatment can be tied rationally to the fulfillment of Congress's obligation toward the Indians, such legislative judgments will not be disturbed.

CHAIRMAN FLEMMING. Thank you very much. Counsel will call the first witness or witnesses.

MR. ALEXANDER. Mr. Slade Gorton, Mr. Louis Guzzo, Mr. Gordon Sandison, Ms. Mary Kay Becker.

MR. Chairman, we've been informed by Mr. Guzzo's office that he's been enroute since early this morning and tied up in traffic and we can add him when he arrives.

[Messrs. Gorton and Sandison and Ms. Becker were sworn.]

TESTIMONY OF SLADE GORTON, ATTORNEY GENERAL, STATE OF WASHINGTON; GORDON SANDISON, DIRECTOR, STATE FISHERIES; AND MARY KAY BECKER, STATE REPRESENTATIVE FOR THE 42ND DISTRICT

CHAIRMAN FLEMMING. Happy to have you with us. Counsel will proceed with questions.

MR. ALEXANDER. Could you each just briefly identify yourself for the record and identify your position and your responsibilities within the State government?

MR. GORTON. Slade Gorton, attorney general.

MR. SANDISON. Gordon Sandison, director of fisheries.

MS. BECKER. Mary Kay Becker, State representative for the 42nd District which is western Whatcom County.

MR. MACKIE. Assistant attorney general, representing the witnesses.

MR. ALEXANDER. Thank you. Ms. Becker, we'll start with you at the moment. How long have you been a member of the State legislature?

MS. BECKER. Since January of 1974.

MR. ALEXANDER. When?

MS. BECKER. I mean, '75.

MR. ALEXANDER. Generally, we have been told from staff background reports and staff interviews that there is a climate in this State of conflict between non-Indian and Indian people. Do you see in your role as a legislator any validity in that comment?

MS. BECKER. I think so. // /

MR. ALEXANDER. Could you specify?

Ms. BECKER. Well, if I could give a little background.

MR. ALEXANDER. Sure.

Ms. BECKER. My primary contact as a legislator with the issue of jurisdiction and sovereignty has been through a bill that I introduced in 1976 which would have provided for a method of retrocession of jurisdiction the State had taken under Public Law 280 back to the Federal Government. And in the process of some hearings which were held on that bill, it became apparent that there was conflict, a distrust, some suspicion, concern on both sides in terms of the jurisdictional structure that has existed in the State and what ought to be done to resolve it.

MR. ALEXANDER. And what was your proposal in your bill?

Ms. BECKER. Well, the proposal in the bill would have allowed sort of a local option of retrocession whereby tribes who wanted to take back jurisdiction that the State had taken under Public Law 280 would petition to do so and that the Governor would then proclaim retrocession provided that the Federal Government was willing to accept the jurisdiction back.

MR. ALEXANDER. Would a bill of that nature stand any chance of passage in the current session?

Ms. BECKER. Well, I guess I can respond by maybe explaining why the bill didn't pass when I introduced it. I think the most direct reason was that the tribes, who had encouraged us to introduce such a bill, decided that rather than press at the State level they would devote their energies to working at the Federal Government level in terms of a national repeal of Public Law 280. I don't think that a bill of that nature can pass without significant support all along the way and the kind of lobbying that it takes any bill to get passed in the legislature. I think it would take a lot to overcome the concerns that existed.

This wasn't the first time it had been introduced. It had been introduced by other legislators several occasions in the past, and I think at no time did it ever get out of committee or at least past that stage. Every time, I think, that the bill comes up or the proposal comes up, there are so many questions that are raised, what is the nature of jurisdiction, and so much confusion as to what the existing situation is and to what would happen if the bill passed, that without a significant commitment of energy and education and so forth, the questions are unanswered and there's a reluctance to proceed.

MR. ALEXANDER. Excuse me, could we swear Mr. Guzzo?

[Mr. Louis Guzzo was sworn.]

TESTIMONY OF LOUIS GUZZO, MEMBER, GOVERNOR'S STAFF FOR
MINORITY ISSUES

MR. ALEXANDER. Mr. Guzzo, could you explain what your responsibilities in the Governor's office are?

MR. GUZZO. My responsibilities are fairly well defined, but perhaps I should make a brief statement before I say anything else, if you don't mind.

MR. ALEXANDER. Is it written?

MR. GUZZO. It's written, but it explains why I am not offering any written statement.

MR. ALEXANDER. Is it a single page? Okay.

MR. GUZZO. Neither the subpoena I received nor the conversation with members of the Commission staff have apprised me of any particularity as to any specific areas of your concern. The absence of such information has made it impossible for me to confer with the Governor before appearing. Considering the relative newness of the Governor's administration of which I am a member and the lack of information from you, and I emphasize, any statements which I make in response to your inquiries will reflect strictly my personal impression and in no way purport to represent the official views of the Governor of the State of Washington.

MR. ALEXANDER. You have been the Governor's major staff person with respect to minority issues and specifically with respect to the Indian tribes in this State?

MR. GUZZO. Yes, I have been, but there is a rearrangement of certain affairs in the minority area.

MR. ALEXANDER. Yes?

MR. GUZZO. So that I am now not going to be totally responsible for all minority positions.

MR. ALEXANDER. Do you have continuing responsibility in the area of Indian affairs?

MR. GUZZO. In Indian affairs, yes. And that area consists primarily of setting up discussions for the purpose of future negotiations.

MR. ALEXANDER. Is there at the current time, to your knowledge, an official State policy of this administration with respect to the tribes that are within the geographical boundaries of this State?

MR. GUZZO. Yes, I think there is a—perhaps not a written policy statement but a long-time understanding as espoused by the Governor of achieving fairness for all Indians as individuals just as it would be for any other citizen of the State, or citizens of the State.

MR. ALEXANDER. That's as Indians, as individuals?

MR. GUZZO. Yes.

MR. ALEXANDER. What about a policy with respect to the tribal governments within the State?

MR. GUZZO. Within the purview of my own responsibilities, the Governor has been in conversation, in discussion through representatives, with the Conference of Tribal Governments, which represents many of the tribes in Washington and we understood at the beginning there was an attempt to achieve some kind of unity of voice in Washington State for all Indians, but this is now in the embryonic stage and it has not been as smooth as we would have hoped.

MR. ALEXANDER. These negotiations started last January?

MR. GUZZO. They're not negotiations.

MR. ALEXANDER. These discussions?

MR. GUZZO. These discussions, they started in February.

MR. ALEXANDER. February?

MR. GUZZO. With an appearance by the Governor at a meeting of the Conference on Tribal Governments.

MR. ALEXANDER. You have stated in discussions with staff something to the effect that the situation with respect to Indian tribes and individuals within the State may well be the major domestic crisis of the State within the next decade or so. Is that an accurate reflection?

MR. GUZZO. That was a personal remark, not the Governor's, although I think the Governor may share that feeling. I have a personal feeling that the problems related to the tribes and to individual Indians may very well be the most important domestic issue in this country.

MR. ALEXANDER. Could you explain why you think that is true?

MR. GUZZO. Because some very basic disputes and divisions, traditional divisions may accrue. We actually are pondering a double society, and we must be sure that whatever negotiations, whatever discussions, whatever results accrue from any talks or negotiations are not only fair to both Indian and non-Indian but do not conflict with the traditions of this country with regard to individual freedom and rights.

The Governor has stated, and I certainly do also subscribe to this feeling, that we must obtain justice for the Indians but not at the risk of injustices to non-Indians. That sets up a very difficult future in which we have—

MR. ALEXANDER. How do you define what is justice, Mr. Guzzo? Are you talking about how the Supreme Court has interpreted the Constitution with respect to these issues or other Federal courts, or are we speaking about something beyond the Federal judicial system? Are we speaking of some broader, one's own view of morality? What do you mean by justice?

MR. GUZZO. That's a tall order. If we were to engage in a philosophical discussion on what justice is we'd be here for weeks. I'd have to say simply whatever our courts decide.

MR. ALEXANDER. And as State officials, whatever the superior Federal courts decide that is what the State will carry out?

MR. GUZZO. You're leading me to a problem there when you say Federal courts.

MR. ALEXANDER. Well, if there are—whichever court has a superior right on an issue.

MR. GUZZO. I think I can only say that the Governor and I also believe that we're a nation of laws and that we abide by what the courts decide, and we will not engage in too deep a discussion of what justice implies.

MR. ALEXANDER. Mr. Gorton, would you agree with Mr. Guzzo that Indian issues, legal and otherwise, represent a major crisis situation or a major potential problem for the State and all of the citizens within it over the next decade, or have been over the past decade?

MR. GORTON. Mr. Alexander, I intend to precede any answers to your questions with a short statement about this hearing. I will be happy to answer that question.

With all due respect to the Commission, I approach this proceeding with two major questions of my own. The first, is why are we here, and the second, is why are you here?

The State of Washington, its citizens, and its officers have in the past and continue in the present to act in a reasonable, responsible manner in the area of human and civil rights concerns. Our object, which I thought was the same as that of the Commission, is to facilitate the integration of our society and to promote the ideals of equality. If the Commission intends to concentrate its inquiry on the subject of American Indians in this area, I would suggest that it separate its inquiry into three parts: first, the civil rights of Indians on the same basis as all other citizens of the United States; second, the civil rights of non-Indians as they are directly and adversely affected by the action of tribes, both within and without Indian reservation boundaries; third, claims of special Indian rights arising out of treaties or Federal statutes which create a form of supercitizenship.

I would suggest that the first two categories are similarly matters which are properly within the jurisdiction of the Commission and that they should be given equal emphasis. I would suggest, however, that the interjection of the Commission into the question of supercitizenship rights of Indians is neither proper nor appropriate.

There is at the present time litigation being vigorously pursued in both Federal and State courts designed to define the nature and extent of both Indian fishing and water rights. Other similar litigation involves State taxes and criminal and civil jurisdiction. Some of that litigation is now before the United States Supreme Court. All of these matters are being fully adjudicated in an attempt to define the nature and extent of the rights of both Indians and non-Indians. Until such rights have been determined, it is not reasonable to expect either the State or its officers voluntarily to accede to the extraordinary claims which are put forth on behalf of some of the Indians of this State. We have frequently found that while the courts have decided in favor of the Indians in connection with some of their claims, those courts have normally refused to adopt the positions that have often been espoused on behalf of Indians.

Moreover, your very presence here and the form of notice to this hearing which apparently states the nature of your conclusions before you have taken a single word of testimony tends both to interfere with the process of the courts and to cast a chilling effect on

the right and the duty of the State's officers to protect and defend the rights of all of its citizens to an equal protection of the laws.

The answer to your question, Mr. Alexander, is that I agree with Mr. Guzzo, that these problems of the relationship between Indian citizens and non-Indian citizens of the State are at the present time a very serious problem with very wide ramifications.

MR. ALEXANDER. In your statement you mentioned, of course, the judicial forum as one arena that some of these issues are being addressed in and defined in. As the chief legal officer of the State, do you also have a function within the congressional arena in terms of the State's position on what Congress can or cannot do with respect to some of these issues?

MR. GORTON. Well, I don't believe I have any official function in telling the Congress what it can or cannot do.

MR. ALEXANDER. Or suggest?

MR. GORTON. I have a right, which is secondary to my position through the court system, to suggest to the Congress what I believe that it ought to do.

MR. ALEXANDER. For example, in the situation that Representative Becker was speaking of earlier in terms of retrocession of jurisdiction, has your office taken a position or recommended a position to the current Governor on the legislation that is currently pending in the Senate for tribally initiated retrocession?

MR. GORTON. We have not.

MR. ALEXANDER. Has the Governor taken a position on that legislation, Mr. Guzzo?

MR. GUZZO. Which legislation in specifics?

MR. ALEXANDER. That would be tribally initiated retrocession legislation currently pending in Congress?

MR. GUZZO. No.

MR. ALEXANDER. Formerly known as S-2010.

MR. GUZZO. We have not taken a position.

MR. GORTON. Your original question had to do with legislation that Ms. Becker said she introduced in the State legislature.

MR. ALEXANDER. Ms. Becker has also said that the forum has since switched, it was now in the Federal Congress where the issue was being discussed.

MR. SANDISON, could you briefly tell us what your responsibilities are?

MR. SANDISON. I am director of fisheries. May I also preface the testimony I give by reading a statement?

MR. ALEXANDER. A short statement.

MR. SANDISON. The apparent concerns of the Commission involve the activities that the fisheries department, which I head, rather than my own personal involvement. It has only been 4 months since I have taken office and, thus, I have tried to familiarize myself with past action of departments and those of my predecessors. As Judge Boldt himself recognized in a decision, beginning on page 389, the

fisheries department has long recognized treaty Indians in response to other court decisions that long predated his. Indian fisheries were authorized in areas closed to other fishermen. Some of the special Indian fisheries predating the Boldt decision are listed in his decision.

This decision also noted additional efforts Fisheries had made which improved Indian fisheries and increased the number of fish available to them. These efforts included directly giving surplus fish from the hatcheries to Indians. In 1972, as Judge Boldt noted, it was 256,194 pounds. Improvement in the wild habitat and probably most significantly extensive hatchery plants which in Judge Boldt's words have contributed significantly to Indian catches of salmon. Those efforts continue today at an increased pace. I would be unfortunate if the attention of this Commission focused on the controversies in the courts and overlooked these efforts of the department of fisheries to increase fish available to everyone. As for the court controversy, a continuous effort has been made to comply with all the lawful court rulings while pursuing appropriate judicial remedies.

In this light, I believe it is appropriate to remember the difficult situation that I and my predecessors have been in with court order following court order, sometimes apparently conflicting orders on the same or following days. On only one occasion, to my recollection, has a move been made in the Federal court to formally suggest citation for contempt for failure to comply with Judge Boldt's orders. That action was dropped. The same has occurred twice in the State courts, a possibility of contempt action, once to each of my predecessors and neither of these resulted in a citation. These court controversies are continuing even today. It should not be overlooked by this Commission, however, that much of our litigation is supported by and even joined in by the Indians.

A prime example are cases where we enter into litigation to protect the resources for all, to accomplish mitigation for losses caused by the U.S. Government, either directly through construction of projects or indirectly through licensing dam projects. Indian tribes have joined with us in litigation involving projects on the White River, Skagit River, Columbia River, Skokomish River. Hopefully these acts will result in more fish for everyone. A balanced view then is that the department, its previous directors, and myself have continued to work with and to the benefit of the Indians of this State and all the citizens of this State, as we are obligated to by law and we do comply with the law, including the courts.

MR. ALEXANDER. Mr. Sandison, there's an implication in your statement that you think perhaps that the position of your department may be misunderstood by the general public. Is that a fair inference?

MR. SANDISON. Yes, I think that very nearly every move that is made by the department is either condemned by the general public,

by the sports fishery, by the commercial fishery, or by the Indians depending on what day it is.

MR. ALEXANDER. Would it be your view that many of the essential facts of the fishing controversy are not well known?

MR. SANDISON. No, I think the essential facts are fairly well known. You have to look at the people who are the participants. You have on one side the Indians who now feel their treaty rights are being fulfilled. In the fulfillment these treaty rights—you have people who are commercial fisherman who are second, third, and even fourth generation in the fishing industry, long-time prominent citizens in their own little fishing communities. All of a sudden, they're told they can't fish. The sportsman is also curtailed to a certain extent. And the general public feels that one, in essence, is creating a supercitizen.

MR. ALEXANDER. In terms of your saying that Indian treaty fishing rights are being fulfilled, in terms of the latest catch data, do Indian fisherman take anywhere near 50 percent?

MR. SANDISON. No, their amount is increasing all the time. Of course, it is very difficult. They have a terminal catch on the reservation when they net the rivers, but they just don't have the fishing boats as yet, and they have the competence, but they don't have the ability to fish on an even basis yet because they haven't enough equipment, enough boats.

MR. ALEXANDER. In terms, for example, the lower Puget Sound tribes, many of whom are river fishermen, would the impact of having additional fishing gear, which you seem to be suggesting, affect them when they are in essence at the end of the fishing run?

MR. SANDISON. Well—

MR. ALEXANDER. You mentioned the Nisqually in your statement there.

MR. SANDISON. I would think that in terms of netting of the rivers, it is just about at a saturation point now if you're going to allow any kind of escapement for conservation. I speak more in terms of purse seine, gill net boats, and troll boats.

MR. ALEXANDER. We requested from you, as you well know, data on the fisheries' catch totals and which I have summarized. We will submit that into the record at this point, your letter, but let me just summarize and see if you view this summary as accurate.

CHAIRMAN FLEMMING. You want to insert it at this point in the record?

MR. ALEXANDER. Yes.

CHAIRMAN FLEMMING. Without objection, we'll insert it as Exhibit No. 2.

MR. ALEXANDER. That between commercial non-Indian fishermen, sports fishermen, and Indian fishermen, that Indian fishermen still take the lowest proportion generally of the catch.

MR. SANDISON. Because the season isn't over, I'm not sure, but I think that's probably a safe assumption.

MR. ALEXANDER. Yes. We were discussing before that many of these issues are in litigation. Some of these issues are also, I gather, in the subject of the Federal task force.

What is your view as to what role the Federal Government should be playing in this controversy, since we're clearly not just limited to the courts.

MR. SANDISON. Well, I would think that at the beginning, the Federal Government came in with both fists clenched and immediately engendered a great deal of resentment in the populace. I think now with the creation of the task force, the Federal task force, and then their local counterpart which are the subordinates, that we're beginning to move ahead in this thing, and I think we're beginning to see some light at the end of the tunnel. We work quite closely and met with them and intend to meet this week with them again. We also have a State task force, which, although it has only met twice, they also are trying to work with their Federal counterparts.

MR. ALEXANDER. So you see an appropriate Federal role here in the controversy at least from the task force point of view?

MR. SANDISON. I think because of the treaty, the appropriate role I do not see is that I don't think the Federal Government should be involved in managing the fisheries of the State of Washington.

It's the taxpayers of the State of Washington, their State taxes, who have created 27 hatcheries. We have the harvest management, the people who can forecast the runs. We have that competence that the Federal Government does not have as yet, and I would say the only problem we might have is because of the lack of knowledge on the part of some Federal people, and by that I don't mean the National Marine Fisheries. They've done quite a good job.

MR. ALEXANDER. In saying that you believe that the State has the competence to manage the fisheries, I believe in an interview with our staff, you indicated that the State bore at least some of the responsibility for the diminishing fishing runs that have been current in the last decade. Is that accurate?

MR. MACKIE. Mr. Alexander, the question that you raise is under litigation in what is referred to as phase 2, which the United States Government, which you're representing here, is in fact the plaintiff making these assertions in court, and we feel it would be highly improper to ask this question.

MR. ALEXANDER. We withdraw the question.

In terms of the State role in enforcing fishing violations to the extent that you have authority, what is the staff that you have available to you in terms of fisheries enforcement officers?

MR. SANDISON. We have a total—although they're not always on duty because there are vacations and so on—we have a total of 52 officers to cover the entire State.

MR. ALEXANDER. Has your department found that to be sufficient?

MR. SANDISON. No, it is not sufficient, but looking realistically at what is available in the State of Washington, that's about the best we can do, and it is very close to being sufficient. We're doing a reorganization of that department. I think we'll make them more mobile, more sensitive, and change their mode of operation.

MR. ALEXANDER. Have you requested additional funds from the State legislature to increase your capacity in enforcing State fisheries laws?

MR. SANDISON. Mr. Alexander, I was a member of the legislature until June 22nd, and there's been no session so I've had no opportunities to request—

MR. ALEXANDER. Well, when you were a member of the legislature were you aware of the department over the last 5 years, where the issue of fisheries enforcement had been at least significant in the press, coming in and asking for a massive increase for the department's capacity to enforce State fisheries laws?

MR. SANDISON. No, not to my knowledge, and I've watched it quite closely. There has been a modest increase requested but not a massive one.

MR. ALEXANDER. What would you see as the ultimate solution to the controversy, the fishing controversy, which seems to have spilled over in many other areas of the State, in your own personal view?

MR. SANDISON. My own personal view, and it is one that we're looking at, is that you increase the ability of the Indian to fish in common, and then you do not close waters to a person because he happens to be non-Indian or Indian. You manage the whole fishery the same because everyone has an equal ability to fish. Now, this of course means that there will have to be some non-Indian fishermen taken off the water because already we have too many people fishing and there's too great an impact on the fishery, but this would probably be the simplest, and it's far from being simple but is probably the simplest way of doing it.

MR. ALEXANDER. Does your view also involve sports fishing to any extent?

MR. SANDISON. Well, yes, we've always—as a matter of fact, the entire Pacific Ocean is closed now, and we closed it to sports fishermen and we closed it to the treaty fishermen and nontreaty fishermen. They're always involved, yes.

But it is a different thing with the sports fisherman. You're saying he should be treated the same possibly, and yet that sports fisherman goes out there with one line maybe 1 or 2 days a year, and if he's lucky he averages about a fish and one-tenth, as I recall, every time he goes out, and I don't think you can treat him the same as you do with commercial fishermen with their nets and with their multiple-lines in the case of trollers. You take them all into consideration in management, but you don't try to treat them equally because they come into the game very unequally.

MR. ALEXANDER. How substantial a portion of the catch were sports fishermen responsible for? According to the figures you submitted to us on the 1975 chinook run, they took approximately 600,000 fish out of a total of slightly less than 2 million?

MR. SANDISON. Of course, you're only looking at part of the fishery. We have in this State the sockeye, which do not lend themselves to the sports fishery.

MR. ALEXANDER. Nor chum.

MR. SANDISON. Nor chum, which is a huge fishery. The only time sportsmen impacts is on coho and your chinook, and they do catch, I think, it's about 40 percent on those, but then you look at all the rest of the salmon that are in the streams they really do not take that much.

MR. ALEXANDER. Mr. Gorton, would you feel it appropriate for you to comment on what you would perceive as solutions or appropriate Federal role to the growing controversies or ongoing controversies in the State?

MR. GORTON. The Federal role is almost certainly governing when you combine the right of the Federal courts to interpret Federal laws and treaties, the right of the Congress to change those laws and those treaties, and the operation of the Federal task force in this State, given the present state of the law. No question but that the ultimate decisions in this controversy will be made by the Federal Government through one entity of that Government or another.

MR. ALEXANDER. Do you, any of you gentlemen, as State officials, through your various associations with other State officials like the attorney general's association, and so forth, try on a national basis to indicate the direction that Federal policy should go in these areas?

MR. GORTON. The National Association of Attorneys General has never devoted a major portion of its activities—and I can't at this point remember its devoting any portion of its activities—to legislation relating to Indian-non-Indian relationships. That's largely, of course, because the majority of the States do not have this problem.

The Western Conference of Attorneys General met here in Seattle in August and devoted at least 90 percent of its meeting to a consideration of Indian controversies. Fishing was probably the least important of those, if it was discussed at all, at that meeting, again, because really only Oregon and Washington are impacted in a major fashion by it. Most of the concerns expressed by the attorneys general there related to water rights, to jurisdictional issues, and to issues relating to taxation which all of the Western States had in common.

There were a number of resolutions passed which were sent to members of Congress, but no active lobbying effort has been commenced by the National Association of Attorneys General in the Congress.

MR. ALEXANDER. Mr. Guzzo, when you met with staff you indicated that Governor Ray was going to meet with the Western Governors Conference and, as it was reported, try to get the Western Governors Conference to get actively involved with Indian affairs on a political basis.

MR. GUZZO. Yes. That was initiated. However, it is not going as fast as we hoped. The Governor's intention is to eventually interest the national Governors in a special conference on Indian issues, all Indian issues, with several goals in mind: first, to establish some guidelines that Governors can live by, can accept, and can pursue; secondly, to make recommendations to the Congress and to the national executive on directions in the future because Governor Ray has said many times that we can proceed on the State basis to settle as many problems as now exist, but there is a limit because we must have national guidelines, since treaties are by their very nature a national exercise, and States cannot resolve questions that were either originally or still are of national concern.

The impetus there is to try to get the national spotlight on the issues so that we can get Congress, primarily, and the White House, the executive to lay down some guidelines for us to abide by in the future.

MR. ALEXANDER. Well, the treaties are already in existence and the courts are interpreting the treaties. What is it that you want clarified beyond what the courts are already saying, Mr. Guzzo?

MR. GUZZO. I couldn't answer that specifically, but the Governors—

MR. ALEXANDER. Do you want the fishing case clarified by Congress?

MR. GUZZO. No. I don't want to get that specific. Where Governor Ray is concerned, she'd rather keep it on general grounds.

MR. ALEXANDER. Would all issues—you mentioned the Conference of Tribal Governments earlier—would any potential issue that could in a sense be worked out between the tribes and the States be an open subject for discussion?

MR. GUZZO. Look, let me explain what the Governor's general policy is and maybe this will answer your question better if we pick it apart.

The Governor has indicated to me that she wants to proceed on an issue at a time with tribal governments, either in concert or individually, to try to achieve solutions through discussions and possibly later through negotiations. The only problem with that, thus far, is that so much of the area is circumscribed or is already taken up in litigation or in discussions already under way, department to tribe, that is not really very much left for us to do on a conference to governmental basis. But, nevertheless, there are certain areas that we can proceed on and that is where we are now in our discussions with the tribes.

There are areas, for example, in human services in which we can make great strides, we think, in the delivery of human services or to try to detail which human services might be taken over by tribes and run by themselves. That might encompass quite a few human services, but the issues are limited by our own ability to come to decisions that are not already in litigation or inside discussions.

MR. ALEXANDER. That's what I wanted to clarify. In a sense, is it your view that anything that is in litigation, between yourself and an individual tribe, is not a subject matter to be discussed with the tribes or some other agreements other than the litigation?

MR. GUZZO. If you say "discussed," my answer is we can discuss anything.

MR. ALEXANDER. Negotiated?

MR. GUZZO. But if you're saying "negotiations," then I would have to say, yes, I think that litigation would very definitely limit the negotiation.

MR. GORTON. That's not true and I don't think Mr. Guzzo would say that if he had consulted with us.

Of course, the State is willing to negotiate a matter which is in litigation. A negotiated settlement is, just from the point of any lawyer, is almost always better than carrying out litigation to its ultimate end. And the actual practice of the department of fisheries and of game and Governor's office has been a willingness to negotiate any—

MR. GUZZO. I don't think we disagree. As a matter of fact, the Governor is trying in fact to dissuade tribes from taking legal action but instead coming to the negotiation table.

MR. ALEXANDER. Even, Mr. Gorton, just to clarify it a step further, even if litigation has been initiated, negotiations, I would assume, appropriate—

MR. GORTON. Totally appropriate.

MR. ALEXANDER. Have you or your office been involved with the State as part of its team in the Conference of Tribal Governments or consulted, to your knowledge? The State has met twice formally with the conference and there have been—

MR. GUZZO. Assistant Attorney General Charles Roe has been constantly with us in our discussions.

MR. GORTON. I have not been involved in that, no. Negotiation in this direction is conducted basically through the United States Attorney.

MR. ALEXANDER. Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. Thank you very much. First of all, we appreciate very much this opportunity of obtaining the views of those who are associated with both the executive and legislative branches of the State government.

The attorney general in his opening statement raised some questions relative to the role of the U.S. Commission on Civil Rights.

Prior to your coming I made an opening statement, designed to lay the groundwork for the kind of questions that we would be asking, to identify our interest.

As you probably know, the U.S. Commission on Civil Rights is a bipartisan independent agency—I underline that—which has been charged by the Congress over a period of the last 20 years with investigating deprivations of equal protection of the laws. And having completed our investigations and having weighed our evidence, we are charged by the Congress with submitting our findings and our recommendations both to the Congress and to the President.

You identified, Mr. Attorney General, three areas and I think that your identification is a good idea, identification as far as those three areas are concerned. This Commission will take testimony, will consider evidence, in all three of those areas. I can assure you that the Commission will arrive at no findings, no recommendations or conclusions until we have had the opportunity of carefully weighing the evidence which has been developed by staff in connection with their investigative activities and which will be presented to us during the next 2 days. I think as we proceed it will become clear that we will not proceed to develop findings and recommendations until we have concluded that we have as complete a record as it is possible for us to get bearing on the issues that have been raised.

I noted in the reports of staff investigations, and I have also noted in the testimony, a conviction on the part of State executives, and I assume that is undoubtedly shared by some in the legislative branch, that the Federal Government has been somewhat negligent in clarifying its position on some of these issues.

I just want to call attention to the fact that our findings and our recommendations will be addressed to the President and to the Congress. As I have indicated, this will be based on an evaluation or an analysis of the evidence that may be presented to us.

I have taken note of your comment relative to the fact that certain matters are pending in the courts. This Commission has never conducted a public hearing on any issue without having some of the matters pending in the courts. They may be State courts, Federal courts, and so on. Of course, we take note of that, and we are not going to do anything that would in any way interfere with the effective operation of the courts in connection with matters of this kind.

Counsel has indicated that we're not going to ask questions about matters that are now pending in courts. If either Counsel or members of the Commission overlook that fact, why, we will welcome having our attention called to that by anyone to whom questions are being addressed.

There is just one question that I would like to ask before I recognize Commissioner Freeman. That is this: I note that there is legislation now pending in the Congress dealing with the issue that

was presented to the Washington Legislature through a bill introduced by Ms. Becker, and I noted your feeling that the fact that this issue is now pending before the Congress kind of lessens interest in its consideration by the Washington Legislature. I also noted that questions were addressed to a number of the witnesses as to whether or not the State of Washington through the executive branch had taken a position on this legislation. If my recollection is correct, no position has been taken by the executive branch or by anyone connected with the executive branch. Could I ask whether or not at some point the State of Washington, through its representatives on the executive side, will take a position on this legislation or is it the policy not to take a position on a legislative matter of this kind? I'm just interested now in what we could look forward to as far as the future is concerned.

MR. GORTON. Excuse me. Mr. Mackie informs me that Mr. Dolliver, who was the administrative assistant to former Governor Evans, testified in favor of similar legislation before the last Congress. Obviously, it would have a different bill number. There is no stated policy against taking positions on Federal legislation which would affect the State, obviously. That doesn't mean that we go back and testify in every such case. If I were asked by Congress my views on the repeal of Public Law 280, I would oppose it. I believe that such a repeal would be inconsistent with a drive toward equal treatment of all citizens under the same system of laws. As a matter of fact, I would strengthen it.

You probably know, from reports from your staff, that the unique method of taking partial jurisdiction under Public Law 280, which was exercised by the State of Washington, has been invalidated by the Ninth Circuit Court of Appeals, and we have appealed that decision to the United States Supreme Court. Excuse me, I gather that the Department of Justice has not, to this point, taken a position on whether or not the United States Supreme Court should hear that appeal.

Mr. Chairman, in response to part of your statement there, I can certainly say I'm encouraged at your views that all positions should be heard before a position is taken. I note, however, that on the entire list of persons from whom you will hear during these 2 days, you do not have a single representative of either the commercial fishermen or of the sports fishermen of the State who are very seriously and adversely impacted by the controversy in its present state. We do not represent those people. As a matter of fact, the State is a defendant in as many actions brought by the commercial fisherman particularly as it is in connection with actions brought by the Indians. Their views and in many respects, especially as they affect State law, are quite different from our own, and in order to deal with the three questions at least as I outlined them, it seemed to me to be vital to you to hear from those individual citizens, who are

not officers of the State, as to the effect that this controversy is having on them.

CHAIRMAN FLEMMING. Again, we'll take note of that and take it under advisement in terms of developing a complete record on these issues.

COMMISSIONER FREEMAN. Mr. Attorney General, you use the phrase "supercitizenship rights of Indians," and I am disturbed by that because this seems to me to reveal an attitude that ignores historical background of the whole issue. I have been on this Commission for more than 13 years and, in the many hearings which we have conducted throughout this country, the issue has been that the white majority has asserted to itself supercitizenship rights in derogation of the rights of minorities, and I'm concerned that perhaps you are ignoring the basic treaty rights of the tribes that if you would remove those rights, would remove the protections under those treaties, then there may be some inherent difficulty here in trying to put an equal opportunity clause at this level.

I say that, because Mr. Guzzo said that in his statement, that we are now in the State of Washington by some of the proposals pondering a double society. Well, I would tell all of you that in this nation we have had a double society from the outset, and what we are trying to do is erase the effects of the long-term, long-run discrimination. I'm saying this because to the extent that these statements reflect an attitude that misses the recognition that there has been denial of opportunity to minorities and Indians, that we may have some problems in enforcement of basic law.

MR. GORTON. Commissioner, I don't think that we could possibly find ourselves in disagreement with your proposition that your very Commission was created because of the fact that different citizens were treated differently and that there were supercitizenship rights based on race throughout the history of our society, and that it should be the goal of your Commission to erase all vestiges of that.

COMMISSIONER FREEMAN. We say it should be the goal of the United States.

MR. GORTON. That is correct, it certainly should be. At the same time we are concerned with what we consider to be special rights, particularly those created by treaty, which bear no relationship whatsoever, now or in the future, to past discrimination and which simply substitute one form of what we would consider to be invalid discrimination for another. Both the previous administration and the present administration of the State has consistently supported numerous affirmative action proposals designed to help various racial minorities into the mainstream of society and to cause an integrated society in this State. The State was one of the earliest to pass civil rights legislation of any sort whatsoever many, many years ago before it became at all popular with the Federal Government. But when you face a situation in which a given group of people, without regard to the economic status of any of them, claim

permanent exemption from taxes which are applicable to other persons, claim permanent exemption from land use policies which are fairly enforced on lands of the State owned very, very frequently by non-Indians, claim permanent rights without regard to past discrimination whatsoever to, as a result of treaties, to a permanent form of different and higher treatment while they are in fact citizens at the same time, you simply substitute a form of discrimination against what you have been fighting and against which many people in the United States have been fighting all these years for another equally invidious form of discrimination.

COMMISSIONER FREEMAN. Mr. Attorney General and other State officials, in accord with what you have stated, would you state the employment pattern of your office and indicate the total employees and then the total of Indians employed beginning with the attorney general staff?

MR. GORTON. We have no Indian attorneys on our staff to the best of my knowledge.

COMMISSIONER FREEMAN. What is the total number on your staff?

MR. GORTON. Of attorneys?

COMMISSIONER FREEMAN. Yes?

MR. GORTON. Something just over 160.

COMMISSIONER FREEMAN. 160 attorneys, no Indians?

MR. GORTON. No. We do have a substantial number of blacks, a number of blacks which exceeds the percentage of blacks in our society, and we have hired Chicano attorneys, who have, generally speaking, relatively quickly thereafter gotten better offers, offers for more money from other agencies. It is very difficult for us to hire in competition with you, for example. Federal Government salaries are considerably higher than our own, but we have a very strong affirmative action program in the office of the attorney general directed both at racial minorities and the recruitment of women.

COMMISSIONER FREEMAN. But not directed to Indians?

MR. GORTON. We, to the best—I don't know whether the University of Washington has graduated an Indian lawyer. In any event, in spite of the fact that we have—

COMMISSIONER FREEMAN. All of the attorneys are graduates of the University of Washington?

MR. GORTON. No, but our principal recruiting areas are the law schools within the University of Washington, not our sole area. In each case we asked specifically for the opportunity to interview minority candidates and we interview very nearly all of those who apply for jobs.

COMMISSIONER FREEMAN. Mr. Sandison, will you answer the same question?

MR. SANDISON. Yes, let me preface my remarks by saying: Number 1, we're not only in competition with the Federal Government for fisheries people, we are with the tribes, who are carrying on rather ambitious and ichthyologists and fisheries biologist there.

COMMISSIONER FREEMAN. We just want to know the number.

MR. SANDISON. I don't think it is a fair question until we tell you what the number is, and I would say in the other field, we have, and I'm not sure the number, I know there's at least two in the fisheries patrolmen, several of the office people, we have had people hired away. We have an affirmative action program that every time a position opens up, particularly with regard to the Indians, we try to seek one out.

COMMISSIONER FREEMAN. Do you have any information about the total number of employees in your agency?

MR. SANDISON. Yes.

COMMISSIONER FREEMAN. What is that number?

MR. SANDISON. About 450.

COMMISSIONER FREEMAN. 450?

MR. SANDISON. Yes.

COMMISSIONER FREEMAN. How many are Indians?

MR. SANDISON. I wouldn't know for sure.

COMMISSIONER FREEMAN. Would you—do you provide any information to any Federal agency with respect to the profile, personnel profile, of your agency?

MR. SANDISON. Well, yes.

CHAIRMAN FLEMMING. If I could interrupt just a moment, the department of fisheries has, Commissioner Freeman, provided us with employment personnel summary by category of race, sex, and age, and without objection, I think we should enter it in the record, at this point, as Exhibit No. 3, but you may want to ask some questions.

COMMISSIONER FREEMAN. Yes, I do. I see, according to the figures here, there are in the executive section—you have a total of 36, 35 Caucasian, 1 Japanese, 0 Indian; paraprofessionals total of 38, 32 Caucasian, 2 Indian, 2 Asian, 2 Spanish American; professional, 214, 204 Caucasian, 5 Indian, 1 black, 4 Asian; trades, 111, 100 Caucasian, 2 Indian, 2 black, 3 Asian, 4 Spanish American; clerical, total 45, 38 Caucasian, 2 Indian, 1 black, 2 Asian, 1 Spanish American.

That is the information that your office submitted to this Commission as of October 7, 1977. This is the information that is in the record at this point.

MR. SANDISON. Of course, a proportion of population that's not bad, and we still have an affirmative program.

COMMISSIONER FREEMAN. We're just asking for the facts, sir.

MR. SANDISON. Those were the facts.

COMMISSIONER FREEMAN. Thank you. I have no further questions.

MR. NUNEZ. Mr. Attorney General, I would like to get back to the question of your characterization of the issue as being one of dealing with supercitizens, and one of the questions that arises is do you accept the view, which is a long-term view, that Indians in our society have had a very special relationship to Federal Government and that their rights and privileges are not exactly analogous to the

rights and privileges of all other citizens in our society to the point that the whole area of civil rights has a different dimension for Indians? In quoting from our staff report, a Federal court case, I quote from it:

The tribes owe no allegiance to the States and receive from them no protection. Because of the local ill feeling, the people of the States where they are found are often their deadliest enemies. From their very weakness and helplessness so largely due to the course of dealing of the Federal Government with them and the treaties in which it has been promised, there arises the duty of protection.

Now, the question arises here, you as the chief law officer of the State of Washington, what is your view? I just want you to clarify it a little bit because, in hearing you discuss this issue, I get the impression that you deny that there is in fact a special legal relationship between Indians, American Indians and the State and other citizens.

MR. GORTON. Mr. Director, I think it should be made very clear that the quotation that you stated from a United States Supreme Court case was dated 1886. It was 3 years before Washington became a State. The present views of the United States Supreme Court as stated in the *Puyallup III* decision as recently as last June, of course, are quite different from that. From a historic point of view, the first part of your statement was certainly correct. The Constitution of the United States does have a special section on Indians and on their relationship with the United States, which is subject to the control of Congress. I think my answer to your Chairman's question, or perhaps it was Mr. Alexander's question, indicated that view as a matter of law. The problems with which we are dealing will largely be solved by Federal court decisions, Federal agency action, and by the Congress of the United States.

I think that the ultimate goal, however, of all of our deliberations should be a society in which there is no racial discrimination whatsoever, in which what was obviously a truth in 1886, as it was set out by the United States Supreme Court, is not the case. It is not the case in the State of Washington. Indians here, as elsewhere in the United States, are citizens of the State. They are entitled to the protections of the State. They get the protections of the State and of the government. They vote for members in the legislature.

Many of the problems, from my point of view, that have caused the very adverse situation of Indians, lower educational attainment, lower economic status, lower income, have been due to the policies of the Federal Government for very, very close to 200 years, policies over which the States, whether this or any other, have had no control whatsoever. The Federal Government has treated the Indians in a highly paternalistic fashion, as if they were not capable

of making decisions for themselves, consistently throughout our history. But no one will deny the facts of history. What you, I assume, are seeking here is a pattern of what the future ought to be like. I think that's what we're all looking for, a pattern of what the future ought to be like, and the future should not involve the kind of situation that you quoted from the United States Supreme Court or anything else which denies equal opportunity to Indians or any other minority or any other group in our society.

MR. NUNEZ. Just to clarify the question once more. I think everything you've said I would concur with, but are you indicating that you foresee for the future—well, specifically for the future in the State of Washington, that there should be no special relationship with the Indian citizens, that they should be dealt with exactly like all other citizens in the State of Washington?

MR. GORTON. Well, as far as the State of Washington is concerned, under our laws, we do not distinguish one race from another in any respect whatsoever. Whether or not a future special relationship will exist between the United States and its Indian citizens because of their special historic arrangement is a matter which only the Congress can decide, not only the existence but the degree of that relationship. The State has, of course, engaged in affirmative action programs in a conscious fashion for a long period of time, which are for the benefit of Indians as well as for other minorities, which don't have the same constitutional status under the Federal Constitution as do American Indians.

CHAIRMAN FLEMMING. Mr. Alexander.

MR. ALEXANDER. Let me ask both Mr. Gorton and Mr. Guzzo, you gentlemen mentioned the future in a sense. Is it your view that tribal governments are and should be permanent institutions on this continent?

MR. GORTON. That's a difficult question for me to answer, permanent is perhaps too long a statement for any of us to make under any set of circumstances. I believe, however, at the present time at least, to the maximum extent which American Indians wish, tribal government should be a reality, as it affects the lives of those Indians. I do not believe that tribal government should have criminal or civil jurisdiction over non-Indian citizens. That also is a question which is, at the present time, before the Supreme Court of the United States but a question which is probably subject to the action of Congress in any event. Of course, there's obviously some difficulties. We impinge upon one another as citizens in the United States, but as a general proposition, it seems to me, Indians should be free to govern themselves as they wish to the maximum possible extent, but they should not be free to govern non-Indians.

MR. ALEXANDER. Mr. Guzzo, could you comment?

MR. GUZZO. Yes. I would not only encourage continuance of tribal governments, but would be willing to say—this is a personal reflection—that they ought to be permanent. However, the trick is

going to be to continue negotiations or discussions of relationships between tribal governments and government agencies or government entities, while at the same time ensuring that individuals are treated like all others. That will be the trick of the century for us to pull off. I'm not so sure that is possible without national guidelines, but I have to say one more thing—this is also a personal reflection. When you speak of the future, it disturbs me that in one area, at least within minorities or among minorities, we are trying to achieve integration on one end, while on the other, we seem to be traveling the road toward segregation of an Indian society within itself, and that bothers me philosophically, it bothers me other ways, too, and I don't know how we're ever going to achieve solutions without some national guidelines that have some meaning and also protect individual rights.

CHAIRMAN FLEMMING. We appreciate very, very much your being with us and sharing your views with us in connection with these very important issues. Thank you.

Counsel will call the next witnesses.

[Messrs. Tonasket, De La Cruz, and Whitebear were sworn.]

**TESTIMONY OF MEL TONASKET, CHAIRMAN, COLVILLE
CONFEDERATED TRIBES BUSINESS COUNCIL; JOE DE LA CRUZ,
PRESIDENT, QUINAULT INDIAN NATION; AND BERNIE WHITEBEAR,
DIRECTOR, UNITED INDIANS OF ALL TRIBES FOUNDATION**

CHAIRMAN FLEMMING. I appreciate your being with us.

MR. ALEXANDER. Could you each, starting with Mr. De La Cruz, briefly identify yourself, name, tribal affiliation, and any membership in the national Indian organization you may hold for the record?

MR. DE LA CRUZ. Yes, I'm Joe De La Cruz. I am president of the Quinault Indian Nation. I am also president of the National Tribal Chairman's Association.

MR. TONASKET. My name is Mel Tonasket. I'm chairman of the Colville Confederated Tribes Business Council. I'm past president of the National Congress of American Indians, presently the first vice president of the National Congress of American Indians.

MR. WHITEBEAR. My name is Bernie Whitebear. I'm a member of the Confederated Tribes, presently the director of the United Indians of All Tribes Foundation, and a member of the National Congress of American Indians. I would like to add also, if I could, that I'm slated on the agenda here to give testimony on the tribal perspective, and I don't know that I wouldn't better fit in the urban organization section. I'll leave that to the wish of the Chairman.

MR. ALEXANDER. That phrase is used—that term is used broadly, Indian perspective if you will.

This State has just testified extensively as to its view that in essence the ultimate issue is the special status of Indians, and that that is somehow unfair or inherently unconstitutional or whatever.

You heard them. I don't have to repeat what they said. I would like your view as to the status of tribes and its place in the future of this State and this country.

MR. DE LA CRUZ. Starting with me?

MR. ALEXANDER. Yes, please.

MR. DE LA CRUZ. I just heard the testimony of the State witnesses. Historically, in the State of Washington, the 10 or 15 years I've been involved as a tribal representative with officials of the State of Washington, going clean back to Public Law 280, when the State passed senate bill 56 regarding jurisdiction and on up through the years of fisheries, the tribes in this State have not only been attempting to go through the legislature to correct some of the inaccuracies as far as jurisdiction and some of these other issues, the status of Indian tribes in the State, we worked through two or three sessions of the legislature to no avail. Following that there proceeded many court cases regarding jurisdiction on up into the fisheries issues, mainly challenging the State of Washington State constitution, its enabling act. There's been a complete reluctance of the State to work cooperatively with Indian tribes to try to develop a coexistence of our governments between the State government, county governments and State government.

In the last couple of years, going into a new Governor, we've made every attempt to try to develop a relationship and some dialogue with the State of Washington, all branches of the State. We had the two conferences I heard you mention. We developed position papers, policy papers. We tried to get the new administration of the State to come out with a proclamation so we knew where we stood with the State of Washington. Myself and some of the tribal leaders met with the Western Attorneys General, the National Council of State Legislatures, and the National Governors' Conference to try to work out through negotiations what type of relationship Indian tribal governments should have with the surrounding governments. The studies from the State government perspective all pointed out that we, as a government, had a right to exist. As we went through the years of the various conflicts in this State, in most of the areas that we're in conflict today on, as far as our rights as Indian people because of our treaties and our rights as tribal governments, there's just been a complete wall almost that we go up against, when go against the county governments or State governments. There've been many hearings in this State legislature and we tried to get directives of those hearings from the rhetoric of what tribal governments were doing. As of to this day in any court case, the things that we're charged with as far as violating other peoples' civil rights on Indian reservations and other laws, the State has not been able to turn up anything.

MR. ALEXANDER. Mr. Guzzo mentioned the Council of Tribal Governments, stated that the Governor attended the first one. What was the actual followup of the State in terms of the effort of the

Council of Tribal Governments? By the way, was there State aid in supporting that at all?

MR. DE LA CRUZ. I was picked by the tribes to chair the Washington State Conference of Tribal Governments, and both sessions we paid for through—where we got contract monies to hold those conferences. The first conference, the tribal people from the State of Washington and Indian people met here in Seattle and going from past records and past histories of problems we had with the States, even using some of the studies that the State of Washington had initiated through their own task force—are you listening, neighbor?—we developed policy and position papers in 11 areas, 6 of them the most crucial we're having difficulties with the State of Washington. We presented those to the Governor that we wanted to work on, those areas to try to resolve around the table some of the areas we're having problems with. The Governor gave us very good response to the position papers that we presented in February. We held another conference in Olympia in April, and we were very disappointed in that conference because the Governor's office had sent in the areas where we had the six major policy position papers, staff people down at the lower echelon, and they didn't even look at the position papers and really thoroughly study them. They wanted to continue that dialogue right from ground one and like us educate them with the problems. There's a definite long record of the problems. Since then, I, as an interim chairman, have sent letters to Mr. Guzzo and the Governor to try to attempt to get a meeting with the Governor to try to follow up on those position papers. As of this day we have not had that meeting. They tried to go around and attempt to hold hearings and get us together on some of the areas that are really the problems with the State, but they are a lot less problems than some of the major issues we presented. They want to talk about something else rather than the major issues. They don't want to face them.

MR. ALEXANDER. Mr. Guzzo explained and then corrected himself. If you will, what would be open for discussions and what would be open for negotiations? What was the State's position as it was presented to you? Were all subject areas open for negotiations with the tribes?

CHAIRMAN FLEMMING. Could I just interrupt? You identified six major issues.

MR. DE LA CRUZ. There were 11 policy statements, but there were 6 major policy position papers from the past records of our dealings and negotiations with the State. The six major areas that I recall were in tribal government, State relations, jurisdiction, fishing, social and health services, natural resource development, and water rights, and those are the areas we wanted to try to work on without being in court all the time.

MR. ALEXANDER. Was the State willing to discuss all issues that you raised with them or did they impose any limitation on the discussion?

MR. DE LA CRUZ. After our meeting in April, which we had a court recorder and transcripts on, it was—we were very disappointed in that April meeting. It cost us, you know, several thousand dollars to host that conference and put it on, that they wanted to again start from ground zero and go through task forces and everything else. We just felt that it wasn't necessary, that there's been enough studies and even State and tribal people together on task forces that have really researched out the problems and difficulties we have with the State, and we didn't need to start from ground zero again to go through this whole process. I sent letters, as an interim chairman, to the Governor that we wanted to talk to the Governor—really what is her policy going to be, and a couple of letters came back, one letter back from Mr. Guzzo which really was a slight to the chairman and the people that worked on those policy statements. "We don't know who speaks for the Indian." We get that type of stuff from the State historically, and as recent as last week I've sent letters to people in the department of natural resources, and I give a whole history of the dialogue since last February where they wanted to come on Indian reservations and do soil studies. To me was an end run around to getting to do some things that the State revenue department wanted to do 2, 3 years ago on assessing fee-land values only for tax purposes, and I declined, until we know what the policy of the State is, to even allow them to discuss in to do those types of studies.

I haven't gotten a response back again from that letter or from the Governor if she's going to sit down with us.

MR. ALEXANDER. Mr. Tonasket, in your capacity as a former past president of NCAI [National Congress of American Indians] and your work also, as I am aware of, with the American Indian Policy Review Commission, is what is going on in Washington State a unique phenomenon or is this part of a national trend in Indian affairs? Also, how does the relationship between the State and tribal leadership and the other Indian leadership in the State relate to the national Indian affairs?

MR. TONASKET. I think very, very similar. I think wherever there's a significant number of Indian population and particularly where there's large amounts of land base or reservations that have an economic effect on any specific State, you get the same sort of reaction as shown here in the State of Washington. I think some cases it is more, some cases it is a little less. California spent a lot of time down there, same sort of situation, only more of ignoring the tribes. Dakotas, it is more of a confrontation, physical confrontation at times. Montana, confrontation. Southeast, more of an ignoring the tribes. They just can't sit down and talk with them. But there is basically the same problems.

MR. ALEXANDER. In your experience as chairman of the Colville Business Council, is it analogous to what goes on between the tribe and the local units of government, and can you sit down and work out issues on a daily or a long-term basis on a local level or is there a problem that permeates all the way through?

MR. TONASKET. We're more successful in working out our problems at a local level. The town that I live in, Omak, Washington, is divided right down the middle by the border of the Colville Indian Reservation which is the Okanogan River. On our side called East Omak is kind of the poorer section of town, and we're developing that section of town and whenever we have wanted to develop new facilities right at the start we were told that we had to be incorporated into the city limits and live under their laws. After negotiations it was agreed that we didn't have to, that they would supply the water and sewer, and in turn, we would supply available office space to the city, and we can work that out. We haven't really been able to work that sort of situation out with the State of Washington.

MR. ALEXANDER. What is the distinction? If you can sit down and negotiate and presumably not all negotiations would always be successful, but the process is there and sometimes successful between you as a government and—the Colville government—and the non-Indian governments in your community, why is that not as true for State-level officials, in your view, here and in other parts of the country?

MR. TONASKET. I think there is a number of reasons. At the local level our population would, if we could make sure that all of our people got out and registered to vote, we could upset the apple cart of the city fathers and the county commissioners and they know that. The town of Omak and Okanogan and Okanogan County are really dependent on the Colville Indian timber. Omak would die if we would refuse to sell our timber to Crown Zellerbach. The State of Washington in turn knows that our small numbers when it comes to a State poll wouldn't really upset the voting power in the State. I think we might have some effect. I think that, also, we don't have the economic muscle in the State level. I think that when you live with the people in the local community you get to know them. You're living more of a real life and like State government, and I've noticed that even worse than the national government, people live in their own little world and they walk down the halls of whatever department that they work in and that's their world, and people pat each other on the back and yell, "Hi John, you're doing a real good job." However, they don't live out there where the poor people live, where there is unemployment and where there is bad child welfare problems, where there is alcoholism, where there is bad housing, and it's very difficult for them to believe you when you come in.

I think that part of it, too, is there gets to be a confusion, particularly from the State people, listening to the State testify this

morning. It got to sound kind of like there was racial tones involved with it, and from my point of view and from the point of view of a lot of Indian leaders, this isn't a racial problem. It is a political problem. We don't deserve the rights that we've got because of our color. We got the rights that we've got because of our political status when the non-Indians came to this country. I think that is very clear in law. I think that the Constitution of the United States wouldn't even mention Indians in the commerce clause if we weren't political entities at that time, not because we were a race of people.

I think that the same holds true in the State constitution, in the State enabling acts. They recognized us as governments, and that is what's being forgotten when we get into discussions with the State people today. We're not a supercitizen or whatever we were called. We paid dearly for the rights, our people have paid. We gave up lots of things. As Chief Dan George said once, "Sure we've got a lot of these rights, but we don't thank them for these rights nor do we beg them for these rights because we've paid for them with our pride, culture, and our self-respect." If you look at the cultures past and today, we have paid and we're trying to get them back.

MR. ALEXANDER. Clearly, you have stated a position that has been stated many times over historically, a position that's been recognized in the courts over and over again, and yet we continue to hear the words special citizen, that it is Indian rights are a denial of equal opportunity. Is it a lack of understanding or is it a lack of education of the State officials? Is it our system that provides the wrong or no information about Indian people or is it something else? These are not new Supreme Court decisions. They have been repeated year after year.

MR. TONASKET. Let me say two things on that one and then whoever else. One thing, special citizens or supercitizen or whatever Mr. Gorton had called us, I doubt if people in the level of Mr. Gorton or the Governor or any department head would trade places with the so-called "supercitizen" on my reservation and have to live in substandard housing and have an annual income of \$2,000 a year and have their kids taken away and put into another race's home. I just seriously doubt if they would give that up for a special class that we've got.

Another thing I would like to say, is that I think that—I'm going to get mad—I'm not going to say nothing.

MR. DE LA CRUZ. I want to respond a little bit to your last question. As you look at the national perspective and in the State of Washington itself, if you really look down into it, it begins to come very clearly it is an economic—it's not only a political—it's an economic battle when we look at some of the mismanagement of resources and the depletion of those resources, especially when you're looking at renewable resources which fisheries and forestry are, and we are entering a big fiber shortage in the State of Washington. A good percentage of the timber comes from five Indian

reservations, and fisheries and forestry has always been one or two industries in this State, so it is definitely an economic battle we're getting into, because the tribes still retain these resources. As you look at the national perspective with the energy crises in oil and coal, oil shale, and uranium and you look where their remaining energy resources are, everything that seems to be happening to us, that's the bottom line of what the reason is.

MR. ALEXANDER. Mr. Whitebear, in the urban perspective—the litigation issues, hunting and fishing issues, and some of the taxation issues seem to mostly impact upon technically and legally on the tribal communities—is there a climate that generates out of these issues that impacts on the urban community and has there been a change in the last several years in terms of how urban people are treated by the various systems?

MR. WHITEBEAR. Yes. I think there is a definite connection. I think overall that any victory for treaty rights by the tribes is a automatic victory for Indian people, whether they are in urban areas or on reservations. I think any defeat of treaty rights or Indian rights is a defeat for all Indian people. I think, more specifically here in the Seattle area, we still have probably one of the most liberal and sensitive populations, urban populations that we have any place in the Nation and by and large the majority of the people in the Seattle area are not anti-Indian. I think there are small pockets, especially around the fishing communities such as Ballard and so forth.

There may be tendency for small pockets to be anti-Indian or more anti-Boldt decision than perhaps in Seattle proper. But one of the things that we found out, at least from the united Indian standpoint, is there is a very large supporting population not only for Indian rights but human rights in the Seattle region, and I think that will continue regardless of what happens, and I hope Seattle will continue to lead the way for the Nation in that regard.

Relative to impacts on programs because of what's referred to now as the non-Indian backlash, I think there is a distinct impact perhaps in the State legislature. I think in the Federal agencies there has been a coolness towards Indian legislation, pro-Indian legislation, and I think some of the things may have come to a standstill, and that a lot of the legislation is not only tribal oriented but affects all Indian programs whether on reservation or in the urban areas.

I think that some of the things that we're seeing in the Indian Education Act, Office of Education, Title IV, quite specifically might be a result of something that I think this Commission should investigate very seriously, as it is what almost appears to be a designed attempt at killing the Indian Education Act because of the method in which the funds and programs have been administered. Last year all of the programs throughout the Nation had to wait 3 months before they had any funding for their programs. This year the programs begin in September. It's already the third week in

October, we still have no funds. We have grant award letters. In addition to the fact that there was a reduced funding level last year, they increased the program here by 2 additional months but did not increase the funding. It just seems that there are too many problems not to have been designed by somebody, and I would really encourage this Commission to take a look at the Indian Education Act. The communities, the tribes, the cities need this money. It shouldn't be curtailed, it should be expanded, it should be tripled, and obviously, we don't want the net result to result in a total discontinuation of that funding source, but I think there is something there that bears some very crucial investigation.

I think we've been able to, through the United Indians of All Tribes Foundation, attempt to destroy the efforts of a lot of bureaucracies that pit the urban Indian against the reservation Indian. I think through our own board of directors where we have both tribal representatives as well as urban organization leaders coming together for a common cause, the fact that many tribes throughout the Northwest contributed and donated building materials to the construction of a center here in an urban area is significant. I think it is a landmark. I'm sure that the future and the battles that are shaping will have the net result of forcing Indian people closer together. We're standing as a unified voice for the first time, and, regardless of what happens, I don't think that any Indian people are prepared to sell their birthright.

MR. ALEXANDER. The term backlash has been used frequently in the media and occasionally by people who have been testifying here. What in your view from both your State role, your local role, and your role in national organizations is your view of the Federal Government's role in either creating or aiding in any sort of backlash or what its role should be appropriately in dealing with the backlash phenomenon?

MR. DE LA CRUZ. My personal feeling on where the Federal Government's role is—it's commissions such as your Commission right here, because the backlash that we're looking at today is because of the very treaty rights that tribal governments, after many years, those rights laying dormant or trying to resolve, and almost on any front the backlash and the people that are lining up against the Indian people are people that have various types of vested interests on Indian reservations. I'm hopeful some commission will take a look at it and determine facts from rhetoric of what's being said about Indian people in various newsletters and things that are being spread across this country and what's being put into the newspapers. Because I think that every protection is there under State law or under Federal law for what these people are making charges against Indian tribal governments and Indian people today.

MR. TONASKET. If I might add, I think a lot of the backlash coming from the common citizens is mainly out of ignorance, because of the lack of the educational systems to teach anything about

Indians, about treaties even in law school. I'm sure that when you went to law school there was very little about Indian water law, Indian tax law, or anything, and that's the way it was all across the country, even for Indian attorneys when they would come home. They didn't know anything about Indian law. When the population really doesn't know what the rights are and what the laws say, they have to make judgment decisions based on what the media puts out to them or what a politician—usually they're very persuasive in their speech and get the population to side one way or the other, which is very dangerous.

I think that part of the problem in the backlash, I think that the Federal Government is on both sides—conflict of interest. I think you have one portion of the United States Government is saying positive things about Indians, you have another part like the Bureau of Land Management, the Bureau of Reclamation, the Department of Justice, a number of others, in particular those that are related to the natural resources are taking positions that are anti-Indian, because they want to get your water or your energy resources for what they tell us is for the betterment of all the United States. Look what you're doing for the country. Instead of dealing with this openly and fairly, they are ripping and tearing. Grand Coulee Dam is a classic example of that. So we're caught in between whenever we go to the Federal Government. They are helping, and I would wish that the Congress or somebody would have oversight hearings into what sort of manipulations or infiltration or intimidations has the Federal Government been doing in these backlash situations. Are they antagonizing, are they manipulating and controlling? I know they've done the same sort of thing—that I'm afraid what they're doing with the Indians—with the blacks a few years ago, where they had infiltrated. They did the same sort of infiltration and manipulation, instilling conflict with the American Indian Movement. It is all documented and I think that possibly we should be looking at, are they doing that with tribal government and are they getting that conflict between tribal government and State governments?

MR. ALEXANDER. What role would you see the Federal Government playing? What role do you view the Federal Government as playing in a situation like the one that we have currently?

MR. TONASKET. If I was God, and I'm far from it, I think that the perfect thing, at least in my personal point of view, is if the United States Government would live within the law. If they would look at the treaties, and if they would look under their own Constitution, if they would carry out their trust responsibilities in a way of not being our godfathers but being our protectors as they do with any underprivileged developing nation throughout the world. Wherever they are providing technical assistance they're providing educational funds, and they're allowing those governments to develop themselves to fit their unique needs and protecting their rights to govern themselves. I think the United States Government has to do that,

instead of doing it for us and telling us how we have to do it. They interpret differently, where they come in and say our trust responsibilities—the United States Government is saying that we own the water now, we have the right to regulate. That's the only way we can carry out our trust responsibilities. They're taking a property right away from us and they are controlling it, and I think it is totally wrong. They have to, just like any other developing country, we need the technical assistance and the assistance—to help us develop ourselves and our resources.

MR. ALEXANDER. To get back for a moment to the notion of special citizen that was raised earlier, how far away from the 1950s termination era is that type of statement? Is that related in terms of your own understanding of the political and historical swings of this country's policy?

MR. DE LA CRUZ. I think it is even a more critical and stronger situation as far as termination than it was in the fifties when you can hear State officials sit up here and talk about supercitizen this and supercitizens that, and you have congressional people introducing legislation based on rhetoric to abrogate treaties without looking at any facts and determine things on facts.

MR. ALEXANDER. This bill you're referring to is the bill that was introduced last month?

MR. DE LA CRUZ. By Congressman Cunningham, from this State.

MR. ALEXANDER. The Indian Equal Opportunity Act?

MR. DE LA CRUZ. All the same.

MR. ALEXANDER. What is your view of termination legislation that has been introduced?

CHAIRMAN FLEMMING. If I may interrupt, in view of the fact that it has been introduced, a discussion has been introduced, I would suggest that at this point in the record we insert the bill introduced by Congressman Cunningham.

MR. ALEXANDER. Thank you, Mr. Chairman.

MR. DE LA CRUZ. The total point in that legislation it gets right back to what I stated earlier. Because of the economic resources that Indian people have, when you look at basic Indian tribal government and Indian people's rights and what the fact is and the things that come out of some of the State officials, the attorney general's office, really end up in public statements that Indian people don't pay taxes. I heard that up here, Indian people don't exercise jurisdiction over other people and Public Law 280 was a good law but that's in court, and you look at the record, the bad, bad record of the State relationship on the type of statements that they put out, I think the truth will bear out.

MR. ALEXANDER. Do you want to comment directly on the statement, Indians don't pay taxes, a commonly held stereotype?

MR. DE LA CRUZ. This comes out consistently from out-of-State people and I get it from congressional people. "We're tired of giving you Indian people freebies." Indian people do pay taxes and, because

of our treaties, there's certain reserved areas that we don't pay taxes on and that is never clarified. We don't pay taxes on land that the United States holds in trust. In the State of Washington, most of the Indian reservations and Indian communities don't have the supermarket and the stores and stuff for their produce, so they pay the State sales tax. They pay the State gas tax.

MR. ALEXANDER. Federal income tax?

MR. DE LA CRUZ. Federal income tax and this is consistently thrown out in the public's eye. When the State talks about the tribes don't have the right in certain jurisdictions partly over other peoples, and you look into the record after Public Law 280, when the State of Washington assumed jurisdiction on various Indian reservations, they assumed jurisdiction on paper. They never put their dollars and never put bodies out in Indian reservations, so you ended up with a vacuum for years and, along with that vacuum, was county government without adequate funding neglecting zoning and sanitation laws on Indian reservations, so when the tribal governments started to assert and exercise the powers to see that some of these things were corrected, again, we end up into the backlash that we're supercitizens, we're doing things we shouldn't, we're violating peoples' rights and yet the people that are saying that will not go through the due process of court and show where we're violating those rights. It's stuff that they throw out to the media.

MR. WHITEBEAR. I think from the testimony this morning from State officials there is evidence that neither the State nor this government is that serious either about a affirmative action or equal employment opportunity. It is just a question of the math presented this morning as an example. I question any other legislation coming down the pike that would attempt to give more inequity to minorities or Indian people than what has been exhibited in the past.

MR. ALEXANDER. No further questions at this point, Mr. Chairman.

CHAIRMAN FLEMMING. I was interested in the fact that when you identified the various areas where you had entered into discussion with State government, one of those areas was the area of services.

MR. DE LA CRUZ. Right.

CHAIRMAN FLEMMING. I'd appreciate your and other members of the panel commenting on what you feel the current situation is in terms of the delivery of services to persons on the reservation or to those who are living in urban areas. I know that's a difficult question to generalize on. You may want to take a couple of specific illustrations, which I'll be glad to have you do.

MR. DE LA CRUZ. First of all, again, the Indian-Federal relationships based on treaty and various congressional acts that confirm the special relationship and reserved rights are there for Indian people that live on Indian reservations and some of those rights follow them into the urban area. But also most States, and the State of Washington is one of them, passed a citizen right—we are citizens of

the State of Washington, and, as citizens of the State of Washington, there are certain things that we are entitled to for those taxes that go into the State coffers that never get back to Indian people and it's been like pulling teeth to get some of those services to Indian people, mainly in areas of social and health services.

There's several areas that we had cooperation from the State governments that because of the Federal legislation and appropriations that could be cooperative programs to benefit Indian people and relax some of the budgets of State dollars, and just recently, I went through an exercise, and I hope the tribe that was involved doesn't mind my mentioning it, with getting a sewer system in on an Indian reservation where you've got Federal money from EPA [Environmental Protection Agency], where you've got State appropriated money, and you've got the State Clean Water Act and Federal Clean Water Act, and because it is an Indian reservation, the State almost—it is just a knockdown drag-out to get them into cooperative projects such as a sewer system on an Indian reservation because it is an Indian reservation. The State government almost in every area like this, it's just like pulling teeth. The tribal people not only in the reservation and urban area have been having consistent running battles over services from the State's social health services department where there's a definite right in several areas that Indian people are entitled to.

CHAIRMAN FLEMMING. Any others who want to comment on that, any other members of the panel?

MR. WHITEBEAR. Relative to the situation in urban areas, most of it, at least from the State of Washington Department of Social and Health Services [DSHS], there are only probably about two Indian programs funded in this city and both of those are in family planning. There may be 314-D funds into the Seattle Indian Health Board; there used to be, but the department of social and health service funding to urban organizations is somewhat miniscule and Indians generally have to attempt to receive their services through some of the other normal State outlets that are there for everybody, so there isn't any Indian designated funds into the city of Seattle for most of the social service programs.

The Indian Health Service now has provided for contractual service delivery to the Seattle Indian Health Board and they are probably achieving independence and long-term comprehensive planning to a better capability than they had before.

Our organization still does not have the capability of determining the comprehensive planning that we would like to put forth. We basically have to see what type of money is available and whether or not we would choose to conduct a program in that area, so we lose the focus of the total comprehensive plan and reach out and pull in those funds that seem to be available and I think that's back where it doesn't provide for the comprehensive planning or funding support that we need. We end up doing programs that we probably wouldn't

do if we had other choices, but those other choices don't necessarily have funding available. We really have to compete with the funds with any other non-Indian organizations in the city, even the economic development funds that come down for construction. We do not qualify as urban organizations for tribally designated funds or set-asides, and that is right, we should not, but there should be a set-aside above and beyond what's allocated to the tribes for those tribal members that live in urban areas. That basically are capital development oriented and that's what the foundation is involved in. It not only is developing a 20-acre site, it manages a six-story building in downtown Seattle and has a bid in for another 12-acre site for a tribal trade center at the south end of Seattle, but we have to compete with every other entity, every other nonprofit organization, every other city agency, and every other county agency in this region in order to secure any funds.

CHAIRMAN FLEMMING. Some of you, at least one witness, identified the problem of conflicting positions by various agencies of the Federal Government. I suppose we would agree on the fact that some of those conflicting positions grow out of differences in law under which some of the executive agencies operate. More recently some of the executive agencies, Federal executive agencies, have been put in a position where they can deal directly with the tribes rather than the funds flowing through the State. Where that kind of a situation prevails, would you say that your relationships with the Federal Government are better than other situations where the funds have to go through the State?

MR. DE LA CRUZ. I say yes to that. They are definitely better and the vehicle to transmit funds for various programs directly from the Federal Government to the tribe is a vehicle that we should be pursuing because we've experienced several years of funding for Indian tribes channeled through State governments and it's been a big fight on their administrative take off the top and what got down to the tribes, etc., besides the administrative, additional administrative layers of paperwork when it goes through that additional agency, or two agencies sometimes.

CHAIRMAN FLEMMING. Well, I've had the opportunity to observe that both ways and I certainly would concur in your conclusion on that.

Reference was made to the Indian Education Act. Do you deal with the State government at all in connection with that particular act?

MR. WHITEBEAR. It comes directly from Washington.

CHAIRMAN FLEMMING. To the—

MR. WHITEBEAR. To the organizations, school agencies, or tribes.

CHAIRMAN FLEMMING. In other words, here the urban Indians are involved in that your organizations are involved in the use of those funds?

MR. WHITEBEAR. That is correct, and it's even so broad that even non-Indian organizations can apply for the funds.

CHAIRMAN FLEMMING. So your problem there is largely a problem of funds being made available and made available promptly?

MR. WHITEBEAR. The overall problem is one that is historically throughout Indian country is that there's not enough money to do the job. It is the first chance that Indian people through their own parent advisory committees, their own tribal councils, through a lot of their own policymaking thrusts of entities are able to forge educational programs which they believe are necessary for the continued survival of their people in this day and age, and consequently, it's the area that seems to be attacked the most by Congress. There isn't the support that that act needs. There isn't the funding, and delivery of services are curtailed. They automatically force the grantees to go to banks to borrow funds against the grant award, but there's no legal provision for the payment of interest on those loans, and they incur the debt to any organization or grantee to this formula.

CHAIRMAN FLEMMING. Do you feel your problem here is essentially with Congress or do you feel a combination here, I mean, as between the executive and the legislative branch?

MR. WHITEBEAR. I'm not sure. I just have a feeling that there is something too well designed to—I don't even think the Government could screw up this mess continually without some design.

MR. TONASKET. Could I add to that a little bit, maybe Joe would, too, because we've had to go back to Washington and testify on a number of acts and I'm more familiar with those things that are routed through the Bureau of Indian Affairs [BIA]. Most of the time, at least in my experience in the 4 years working back and forth in Washington, D.C., is that Congress usually passes some legislation that is basically pretty good, but when it gets down to a department or to a bureau for them to develop the regulations on how that thing is to be carried out, it winds up to be a book about that thick [indicating]. And what it does is help that department rather than provide the services out to the people which the legislature thought they were passing in the first place. So the old bureaucrats keep maintaining themselves and building their own little kingdoms, and that's where we get lost, I think.

CHAIRMAN FLEMMING. Do you feel the executive branch's recommendations in the appropriation area are reasonably adequate? I mean, I know that we probably never would agree that they are completely adequate, but I'm just wondering whether or not in connection with the whole appropriation process you feel that the recommendations that come from the executive branch are by and large on the positive side?

MR. DE LA CRUZ. In some areas I'd say they have been better. But in answer to your question I'll say no. When you review the *Congressional Record* and you look at the backlog of needs of dollars to rehabilitate and administer and manage natural resources, whether it be farming, fisheries, or forestry on Indian reservations,

and you look at the multimillion dollar backlog of the neglect of the Federal Government in taking care of those resources, those appropriations are not adequate and ones from the administration aren't, and we've had a continuous fight to get these appropriations up. When you're looking at resources, which until just recently have been managed on a liquidation basis because they were on an Indian reservation—

MR. TONASKET. Can I describe a little bit what our process, as a tribal government, we have to go through for Federal dollars and particularly the Bureau of Indian Affairs. They go through the process called the band analysis system. I don't know where the guy is back there that knows all and sees all, but it comes out where they dictate to the Bureau of Indian Affairs how much that a tribe has as a base figure on any specific reservation. They even tell you the line items that the money is going to be in. You don't even have the opportunity to change your priorities unless you take something away. Usually it is about—in my particular reservation about a third at the most of what we need. It goes back after—after the Bureau of Indian Affairs' superintendent brings us this band and says "Here's what you're going to get. Now, what would you change if you lost 5 percent?" "We ain't going to change nothing, that's dumb, don't ask us about that because we're already poor." They said, "Well, you know, 5 percent plus, 10 percent plus," and if you could have anything that you wanted, you can't even think that high anymore, then it goes back and he gives it to the area office. Area office can do anything they want to and we don't see it again; after it once leaves our office we don't see it again. When it gets back to Washington it goes about through four different hands and by the time it gets back and goes to Congress we can't identify it. If we don't ask for something, if we're not willing to take away money out of education—and when I got on the council, which had about a 90 percent dropout of our high school students, we only had about 20 people in college, and we couldn't afford to take away from there, but that's where most of the Bureau's money went, about half of the budget or so goes into education for the BIA, because we're not willing to take away from that when we go to Congress and we ask for extra appropriations because the Bureau never asked for it in the band system, they say, "Well, you never had it in your band so it must not be a priority," and we lost anyway, see, and somebody in OMB [Office of Management and Budget] is really like God to all Indian money, and the Commissioner of Indian Affairs and now the Assistant Secretary of Interior for Indian Affairs is dictated to how much he can ask and he goes up there and looks like a fool, he looks like a blooming idiot because what he's asking for in trust responsibilities is maybe a half a penny to what the dollar amount is that he should have.

CHAIRMAN FLEMMING. On Indian education, have you ever succeeded in getting Congress to increase the amount recommended by the executive branch recently?

MR. WHITEBEAR. I think the legislation provides for a much more increased amount than has been appropriated; I think that's part of the problem, is that if we get even all the funds that are appropriated.

CHAIRMAN FLEMMING. That's a question of the authorization. What I have in mind is when the executive branch recommends a given amount of money for Indian education, in recent years have you ever succeeded, as a result of your presentations to the Congress, in getting the Congress to increase the amount for Indian education?

MR. DE LA CRUZ. We have been successful when you look at the overall budget. We have been successful when we go after it in that way, we get an increase in one area and they'll take it out of another, so that overall budget never increases. If you total it out, we're going backward every year, with inflation and everything and the cost of living, Indian affairs budgets have been going backwards.

CHAIRMAN FLEMMING. Could I just ask one other question, and that is that the State officials in testifying, time and again, said that they felt that this was a matter of the Federal Government clarifying its position. As a general proposition, do you agree that there are things that the Federal Government can, should do that would help to clarify the situation as it exists at the present time within the State of Washington?

MR. DE LA CRUZ. I would, I hope you bear with me, I would like to respond to some questions that were raised in regard to fishing in answer to your question.

CHAIRMAN FLEMMING. I don't want to—in the interest of time I don't want to cover the whole area.

MR. DE LA CRUZ. Briefly, because a question was asked and they stated it's a Federal problem, and it is a Federal court decision that we're involved with, the Boldt decision, and a specific question was asked by one of you about the State's request for Federal appropriations to enforce the Boldt decision. If I recall in '74 the total request was for almost a half million dollars for enforcement and we went in jointly with the State. We were looking for enhancement money to get into our artificial propagation to relieve some of the pressures on the fisheries, but they were just looking at the enforcement thing. "We've got to arrest all these Indian people and all these violators out there."

The other area in fisheries—I feel on some of these treaty issues—yes, yes, it is a Federal responsibility, but in the State of Washington, I think it is a violation of my civil rights as a citizen of this State when I got somebody out of the attorney general's office sitting down in a court and telling the press that I cannot enforce this, that we can't do anything to these people, go out and violate these orders, and as a citizen of this State, I think the attorney general is violating

my rights as an Indian, he represents me, also, and that's happened almost weekly as we go through the circus down there over this fishing thing, and it is a Federal responsibility, but they don't want to recognize it.

The other thing that is a Federal responsibility, and I heard it from many State officials across this country, is that, yes, it is a Federal responsibility, but the Indians are supercitizens or the Congress is the only one that can take care of it and they are advocating abrogating treaties and we know it.

CHAIRMAN FLEMMING. Thank you very much.

COMMISSIONER FREEMAN. Gentlemen, I believe you heard the attorney general indicate that with respect to jurisdiction over civil and criminal jurisdiction that I believe it was his opinion that the tribal government should not have jurisdiction over non-Indians. Now, let me give you an example, on the reservations, I'll put you aware, does that mean that if a non-Indian commits a crime on an Indian reservation, that if the attorney general's position is taken that the tribal government would have no right to enforce the law against the person who is non-Indian?

MR. DE LA CRUZ. Yes, ma'am, that's the position the attorney general is advocating, and that's what we went through in the years I mentioned there was a vacuum. If there was a violation on a Indian reservation by a citizen other than an Indian, we had to depend on and hope that a county sheriff would come down from 30, 40 miles down the road and some reservations even farther, so you had no jurisdiction, you had a vacuum. There was a lot of things happening that no one was paying attention to.

COMMISSIONER FREEMAN. Were there things happening, crimes committed by the non-Indians?

MR. DE LA CRUZ. Yes.

COMMISSIONER FREEMAN. What kind of enforcement did occur?

MR. DE LA CRUZ. Through the years when the State had under Public Law 280 and senate bill 256 assuming various jurisdictions on Indian reservations and any type of criminal action, whether it be theft, hitting somebody, I don't know what you call the term for it, you had to depend on, hopefully, a county sheriff coming down and enforcing that law, and through those years, I did—I don't think I have any more—there were clippings of the various county and city governments and their lack of money and personnel to take care of their own, yet, the State was assuming jurisdiction on these Indian reservations. Some of the tribes through those years and some of the tribes still appropriate large portions of their tribal budget to enforce various laws on Indian reservations. We were able to work out, Mel was mentioning, on a local level for many of the tribes concurrent jurisdiction and cross-deputization so some of those rural areas that are very isolated had some law protection for people. Now, what the attorney general is advocating would throw those areas completely back into a vacuum, unless, which they never have been willing to do

so far, the State would put their money where their mouth is. They never appropriated any money, they assumed those jurisdictions on paper. They never put no dollars up front, they never added any personnel.

COMMISSIONER FREEMAN. I would also like to pursue a statement that was made about the economics of this and you indicated, I'm not sure which one did, but that about a good percentage of timber comes from five Indian reservations. Would you also indicate, and I believe it would be important in terms of the economics and the importance of economics in our total society if perhaps you could identify those reservations where there is this good portion of timber, as well as those reservations where there's oil, coal, uranium, and other resources and give an opinion, if you will, as to whether the proposed legislation for the abrogation, to abrogate the treaties has negative implications with respect to this?

MR. DE LA CRUZ. Yes, ma'am, we could—the 1974 Senate Indian Affairs Committee did studies on the timbered reservations, the forestry resources, and the farming land of all the reservations throughout the United States. I haven't got a copy of this, but they were also doing a study of the energy resources. I think that's completed now. That was in the Senator Jackson's committee.

CHAIRMAN FLEMMING. Commissioner Freeman, I understand we do have a copy of that.

MR. DE LA CRUZ. That definitely is on the bottom line of what's happening to us, as I pointed out. In the State of Washington, in a sense, the five reservations that I mentioned that have that economic resource also that resource is a lever where they can sit down at the county government have to negotiate with them when a good portion of the economic base of those surrounding counties are coming from Indian reservations. They are more willing to talk to you. It is unfortunate, there's 30 some reservations, 36 in the Northwest, and a lot of the smaller reservations don't have those resources, so those reservations a lot of times don't have any time to have a lever to negotiate with local government and State government because they have no economic base.

COMMISSIONER FREEMAN. Is there any danger of a takeover?

MR. DE LA CRUZ. I would say yes, when you're talking about that many dollars worth of resources looking at the history of this country and what's happening in the third world countries, that when 50 percent of those resources are on Indian reservations that something is bound to happen if people aren't looking out for our interests and helping us and that's very much a possibility.

MR. TONASKET. If I might add, the key word was takeover, sparking a light. If I might refer to a situation that happened down on the Navajo Reservation with Chairman MacDonald of the Navajo Nation. He came up to the Northwest, as you might know and it was nationally publicized about Chairman MacDonald having, I don't know, 9 indictments or 12 indictments brought down on him by the

United States Attorney down there, and we supported Peter MacDonald because we thought that some of these things were just idiotic, those of us that know him and work with him. He came up after the charges were dropped and reported to the Northwest Affiliated Tribes and to the Conference of Tribal Governments the happenings down there, and if I might, I would just like to tell you that there is a possibility of takeover. And a short story. There was a newspaperman down in Phoenix, Arizona, that his car was blown up, he was killed. There was a wide search for him, whoever the bomber was. They found him and two other people, two accessories, and under—when he was giving his sworn testimony, this guy who bombed the reporter testified that he was also paid in advance to blow up Peter MacDonald. He was also paid to blow up a tribal office, a United States Post Office, I think, Public Health Service hospital, and one other thing, and the purpose of that was to cause so much, according to what Pete told us, hell and havoc that martial law would be declared, and they would set aside Peter MacDonald and his tribal government and take over. What they were after was control of the tax dollars. They got the Four Corners nuclear plant down there. They've got coal, they've got natural gas, they have uranium, and Pete got his people involved in the political processes, upset the political apple cart, got his own, I forget what they call them, the equivalent to county commissioners, was very influential in getting one Governor in out of the four States that he was involved in, and there was a way to get rid of him.

It was all a plot, and that's part of sworn testimony that could really be looked into. I say if that can happen to the Navajo Nation, it can happen to my tribe, it could happen to Joe's tribe, it could happen to the Spokanes with uranium on their land, it can happen to the Crows with billions of tons of coal under their land. It can happen to any reservation that has a big, free running river that they would not hydroelectric or they would need those waters for reclamation projects. If that can happen to the Navajo, it can happen anyplace and it just scares me plumb to death, and that's a fact that's around today.

Thank you.

MR. NUNEZ. Just one question, I notice that you've been somewhat critical of the Bureau of Indian Affairs and I understand that they are going through a reorganization. What are your feelings about the proposed reorganization from your perspective?

MR. ALEXANDER. You asked the right one, the chairman of the Federal administration task force.

MR. TONASKET. I don't know whether I'm lucky enough or unlucky to be one of the task force members on Federal administration and the study of the Bureau of Indian Affairs. A lot of the things that the new Assistant Secretary from Interior for Indian Affairs has in mind in the reorganization are things that our task force proposed to him and things that the National Congress of American Indians

had adopted in official capacity and provided to him. I think, generally overall, I lend strong support to Forrest Gerard in a lot of the changes he plans to make and I hope he can do them very fast because the bureaucrats are hard to get out and the more time you give them to bury themselves under the table you're not going to find them.

MR. DE LA CRUZ. I would like to make one further response to the reorganization because evidently, as I look at it, it happens at several different levels and from the administration point of view, they have been studying reorganization of the total Federal Government and somewhere in that Indian affairs fits, and I understand they are about 80 percent through with their studies and they haven't talked with Indian people, and I'm hoping somebody up in the higher echelons of the administration don't follow history and think they know what's best for us, without talking to us, because that's why we're in some of these messes.

MR. ALEXANDER. You mentioned earlier, Mr. De La Cruz, about misconceptions that people have, and we've been around the State, our staff has talked to a lot of people. One of the things that doesn't appear to be well understood and that we hear a lot of different stories about is just what an Indian tribal government is and what kinds of services, if any, it provides. Is it totally supported by Federal monies? Is it generating its own income and spending substantial amounts of money of its own for the services that it provides? Does it have court systems? Does it have trained judges and so on? Could you and Mel both briefly comment on that?

MR. DE LA CRUZ. In the State of Washington and across this nation, tribal governments are growing, rapidly growing and they are at various levels of development and growth, and I would say that the tribes of the Indian people that are fortunate enough to be in areas where they have a large holding of trust fund and natural resources are really quite a ways along the way with their court systems, their police systems, and providing other services to people within the boundaries of those Indian reservations.

MR. ALEXANDER. To both Indian and non-Indians?

MR. DE LA CRUZ. To Indians and non-Indians, and right now the dollars come from Federal, State, and tribal to provide those services. In some of the rural areas that you have within this country and within this State on Indian reservations, and I'll speak of Quinalt which I'm familiar since I'm the chairman, our people provide the ambulance services, the police protection, and fire protection for the people in the communities along that whole coastal area. If it wasn't for that, there would not be those protections. We have one area where we are having some misunderstanding which is Amanda Park and you've been there. Amanda Park is the only predominantly white community within the boundaries of the reservation. Amanda Park has its own fire department which is volunteer, and they get, as a fire district,

services from the county, but most of the land around the Amanda Park area, as far as forestry trespass protection, are provided by the tribe, the tribal forestry protection officers, and I might point out for the record, when through the years that was under the Bureau and no one was really paying attention to forestry thefts up on the Olympic Peninsula. In the last 4 years, the tribe through its enforcement has more or less driven the thieves off the reservation. Last year I noted that there was over \$1,800,000 worth of thefts in the national forest and State natural resources lands adjacent to the reservation in Grays Harbor in Jefferson County, so I have to look at that, that those people were all stealing off the Indians until we ran them off.

CHAIRMAN FLEMMING. Mr. Tonasket, in terms of the Confederated Tribes of Colville, what type of government is that?

MR. TONASKET. Ours is very similar to Joe's. We do provide many of the services that Joe's tribe does. We do have our—if I might, a few years ago when our tribe was on the verge of being terminated, we had a majority terminationist council. They gave law and order in a way to the State of Washington without a referendum of the people. When we got on the council, we asked for that jurisdiction back. It was refused, so we took the position after looking at the laws that we had concurrent jurisdiction, that we never had the right to give it away to the State. We just had asked them to carry it out for us. They still refused. We started negotiating with Ferry County, Okanogan County in the State of Washington, the municipalities on and near the reservation, and worked out a cross-deputization program. We do patrol the State highways. We have a tribal judge who is an attorney. He's an Indian, a Colville, who graduated from the University of Washington. For Slade Gorton, we been implementing our own law and order over Indians and non-Indians. We've been taking them to our courts, and for the last—over 2 years we've had not one person appeal our decisions. They have all of the rights that any other court has. They have the right to their own counsel. They have a right to appeal and they have a right to appeal in the superior—or to the Federal court systems. We have not had one appeal.

We started taking the food stamp program and some of the other State functions over, and we worked out a long-standing problem with Employment Security, and we're providing services both to Indians and non-Indians in those areas. So, yes, we do provide many of the services. Most of that is our money. I think that we have a tribal budget of about \$8 million that we provide services for, and the Federal dollars is more for like day care, CETA [Comprehensive Employment and Training Act], and those typical year-to-year type programs, but the biggest, most expensive part is tribal funds.

MR. DE LA CRUZ. I might add one thing, as I look at the problems we encounter in exercising regulations and powers of a government entity, that the problems that we encounter, whether it be

jurisdiction, land use, zoning, or everything else, are parallel to the problems that cities, counties, and States are having themselves, and, of course, our court system are growing court systems yet. We have problems within the county court system, but there's the due process for people to go through their appeals and that's the beauty of this country, and I don't think an Indian reservation or Indian people are looking at it differently.

MR. TONASKET. Could I make a very short closing thing? I think when you listen to the State, you listen to counties, you listen to municipal testimony, you're going to hear a lot of conflicts, a lot of scare, particularly scare, and I think what I said when the western State attorney generals met here in Seattle, and I talked to them, I really believe that we're in a battle—we're in a muscle battle, we're like in a tug of war seeing who is the toughest and who is the strongest and what is happening. The State, particularly the State, is forgetting why they are there, to provide services to needy people, and to protect the resources and to keep the air and water clean, and we all have all those things in common that we have to deal with and we don't have the luxury of time to fight each other over those sorts of things. A young child, whether he is Indian or white or black or whatever other color, is a very important part of both and all societies and we should be working together to make that child a happy life, and they have some things that they can provide and we have some things that can be provided, and I think with that sort of an attitude we can make positive things happen, but to be in a situation where it is supercitizen and in conflict and butting heads, it's those old people who don't know where their tomorrow is going to be, and whose young people who don't know what house they are going to live in. Those are the people that are going to pay the price, not Mel Tonasket, Joe De La Cruz, or Slade Gorton and that's what I wish things could come out of things like this.

Thank you.

CHAIRMAN FLEMMING. May I express, in behalf of the Commission, our very deep appreciation to the three members of the panel for coming here and for providing us with the insights that you alone can provide. Your panel is under the general heading of "overview," and you've given us a very fine overview both in terms of the tribal government situation and then, also, in terms of those who are members of urban communities. I'm glad that those who arranged the panel decided to have both points of view represented; that is, those who reflect the issues in the urban communities as well as those who reflect the issues that you confront on the reservation.

Thank you very much.

We will take just a 5-minute rest and then return.

MR. BACA. I will call Roger Jim, Fred Mutch, Charles A. Rich. [Messrs. Jim, Mutch, and Rich and Mrs. Yallup were sworn.]

TESTIMONY OF ROGER R. JIM, SR., TRIBAL COUNCILMAN, YAKIMA INDIAN NATION; FRED MUTCH, MAYOR, CITY OF TOPPENISH; MARTHA B. YALLUP, ACTING DIRECTOR, DIVISION OF EDUCATION FOR THE YAKIMA INDIAN NATION; AND CHARLES A. RICH, CHAIRMAN, YAKIMA COUNTY BOARD OF COMMISSIONERS

CHAIRMAN FLEMMING. I appreciate your being with us. Would each of you please, beginning with Mr. Jim, identify yourself and tribal or political affiliation if any.

MR. JIM. My name is Roger R. Jim, Sr. I am the tribal councilman for the Yakima Indian Nation and I'm also the president of the Affiliated Tribes of the Northwest Indians.

MRS. YALLUP. I'm Martha B. Yallup and I'm an enrolled member of the Yakima Indian Nation and acting director of the Division of Education for the Yakima Indian Nation.

MR. MUTCH. My name is Fred Mutch. I'm elected to the city council and chosen by the city council as the mayor of the city of Toppenish.

MR. RICH. My name is Charles A. Rich. My tribal affiliation is one of friendship. I am elected county commissioner from Yakima County representing the third district and elected by the board of commissioners, which is three members, to the position of chairman of that board. I am today represented by legal counsel, Anthony F. Menke.

MR. BACA. Could you identify yourself?

MR. MENKE. Yes, Mr. Chairman. My name is Anthony F. Menke and I represent Mr. Charles A. Rich.

MR. BACA. In this morning's session, appropriately enough, I guess, called "overview," we heard a great deal about the different perceptions of the relationship between Indians and non-Indians in the State of Washington. In particular, could you each, beginning perhaps with Mr. Jim, again give your own characterization of what the relationship is in Yakima County, generally, and between the Yakima Nation and the various communities in that county. Mr. Jim?

MR. JIM. Mr. Chairman and Commissioners, and the panel, listening to the presentations this morning regarding the present attitude of the State officials toward Indian people is like a rerun of history that I have encountered in the past 8 years in this State and locally. One thing that really bothers me in respect to the presentation relating to property rights: You hear State officials willing to do away with Indian rights or wanting to, despite the protection of the Constitution and their own State enabling act. I think that has been borne out within a case that is the *Yakima Indian Nation v. the State of Washington* at this time, over jurisdiction.

MR. BACA. Mr. Jim, we'll be getting to jurisdiction further along in our question. I was wondering if for right now you could address the question of the relationship between the two governments or the various governments in Yakima County. Do you think it is the same as or comparable to the apparent relationship between the State government and the various tribes of the State?

MR. JIM. Up to the time that Mr. Rich was elected to the county commission we had no good relationship with the county commissioners although we had, at times, invited them to visit our reservation to better understand the development that was ongoing and is still ongoing at this time because of the development not only of our resources but our own tribal government functions. Since the changeover on the county commission, we've had two new county commissioners elected, we've had a better relationship, not only better understanding but had meetings with the county commissioners where they could better understand our position as the government within the exterior boundaries of the Yakima Indian Reservation that is attempting and is starting to develop control over zoning, over land use, over solid waste, and is assisting quite enormously in the monetary and personnel on law and order functions within the reservation. I believe that just recently, also, that we have had some dealings with our local governments that surround us, like Mr. Mutch and the other local city governments, recently start to come to understand that we are a government and that we have been developing and that we are going to develop.

MR. BACA. Excuse me, Mr. Rich, a couple of State officials at least stated on the record that they regarded the matter of relations between Indians and non-Indians as perhaps the most critical issue facing the State. Do you think it is a critical issue in Yakima County?

MR. RICH. I think that question needs to be addressed just one step further, and that before I make any remarks I would like to preface them by indicating that the remarks that I make will not necessarily reflect the opinion of the board of commissioners. They are my personal remarks and to the best of my knowledge reflect the developments that we have.

It is my personal opinion, from the experiences that I've had, those experiences within our reservation and with our tribal council being of a good nature, a nature of trust, a relationship that I think will be long-enduring. Correlating that to relationships that have developed and are developing with other tribal councils and locally elected officials throughout the country, it is my conclusion that the Indian problem in the United States of America is the most significant racial situation that faces all of us today.

MR. BACA. Do you think that what has occurred in Yakima County, and I would like you to go into that in some detail if you would, could serve in any way as a model for how potential conflict can be averted or how actual conflict could be dealt with?

MR. RICH. That would be my hope. What we have attempted to do in Yakima County is to develop a mutual trust, a mutual understanding. In doing that, I recognize the Yakima Tribal Council as a body politic as I recognize the City Council of Toppenish, the City Council of Wapato as a body politic. In an attempt to develop our corelationship on that basis, we have been, I think, comparable to other areas of the country, extremely successful; however, not as successful as I would like to see us become. That is not to say that there is not sometimes disagreement or that there is always total agreement. In an effort to discuss and resolve the mutual problems that do occur between political entities, we make an effort to meet with the Yakima Tribal Council on a monthly basis. We meet with them for breakfast in a very informal setting. These meetings don't actually relegate themselves to the discussion of jurisdiction. They more profoundly become involved in a sharing of information; whether or not we have a retirement system for our employees; our talking about mutual employee groups; what we can do to better services that are delivered by all of us; what we can do more significantly in the area of land use planning; in the area of concurrent jurisdiction, in the area of law enforcement, in the area of youth. It is a matter of sharing and free ability to be able to talk to one another which is something that does not exist in other areas.

We have also developed through our sources of Federal funds, specifically through the manpower program, a coordinated effort with the Eastern Washington Indian Consortium in an effort to develop fair share allocations that Federal funding guidelines create, an effort to mutually share our resources. We have had the return of respect for our positions from the Yakima Tribal Council. One of the most significant areas, I feel, is that under our CETA program where we contract our monies with the Yakima Tribal Council to a very limited degree at this point. Moreover, because of the limited amount of funding that we have, the Yakima Tribal Council has agreed to serve all the people with those monies as we agree to serve all people with our affirmative action program.

I would like to think that what we have beginning to occur between local government, specifically Yakima County and the Yakima Indian Nation, could be viewed as a model, could be viewed as something for other resources in this country to draw from, but the first thing that's going to have to occur is that local elected officials and local elected tribal officials, both are going to have to talk to one another. Most of the rest of the country has not accomplished that and that concerns me greatly.

MR. BACA. Thank you, Mr. Rich.

One more question in that regard. You mentioned that the commission meets with the tribal council on an informal and sometimes a formal basis dealing with it as an entity of government. How is this council perceived as a entity of government? I mean,

what other American system of government is it considered to be analogous to, by the county commission?

MR. JIM. I would draw an analogy with the tribal structure as very similar in structure to the city manager-council form of government and recognize it as such. The reason, and maybe I should explain why I hold that philosophy, is something that is discussed very little when we discuss Indian problems and that is the treaties.

Each treaty that has been drawn and ratified with the United States Government and Indian tribes is distinctly different with each tribe. In our particular case, the treaty is very specific in the allocation of lands, in the allocation of the political structure. That treaty, I feel, should be recognized along with the Constitution of the United States and along with the Bill of Rights as a document in equal proportion to those.

Because of the unique relationship that we have developed with the tribal council, I think that it has led us to a better understanding of what that document reflects, what that document means. It is very interesting to note that oftentimes the question of sovereignty is raised, the question of a nation or not a nation is raised. Most non-Indian folks refer to the term of nation as a term contrived by the tribes to be called a nation within a nation and that is an inaccurate assessment, at least in our case. It was Isaac Stevens, the Governor of the Washington Territory, that referred to the Yakima Reservation as an Indian nation, not the Indian people, and guaranteed them that right under that treaty.

MR. BACA. Thank you.

MR. Jim or Mrs. Yallup, either one. If you could give from your perspective something of what you think the relationship has been between the county commission and the tribal council or other members of the tribe, Mrs. Yallup, if you would please.

MRS. YALLUP. My feeling is that we have continually—the Indian people—been what we say and do has been misconstrued, misinterpreted, misunderstood by our non-Indian neighbors, that there are things that we can say over and over and over again and the truth of those things does not come across to the non-Indian people. I feel that the non-Indian leaders could play a vital role in helping get those truths across to the non-Indian people to help ease the discrimination that our children and families face in the community.

MR. BACA. Mr. Jim?

MR. JIM. From the tribal leaders we appoint in regard to attempts to better the relationship between our people and our neighbors, our neighbors, like Mrs. Yallup referred to, do not even know we exist even though they live next door to us. They do not know our rights, they do not know the inherent rights that the Indian people have that had been ratified and upheld by a treaty, by Congress for the benefit of these people that had to be moved on that reservation and those that had to live and develop that land for the

full use and benefit of Indian people. Despite the history classes in school and all the things that are going on in school that they are supposed to be teaching the young people, they do not know, yet, that the Indian has grown up right alongside of them, not only in getting beyond that stereotype that you see on the TV or movies but to be able to sit like we are right now, talk of the way of life on an Indian reservation. That my neighbors must, and I hope that Mr. Mutch here, being a father for Toppenish, will better understand our position so that he can realize that we are developing not only in all the functions of a government, but we are surpassing even our neighbors in many areas.

MR. BACA. Mr. Mutch, that, I know that the city of Toppenish and the Yakima tribe have worked together or in some way cooperated on a sewer project?

MR. MUTCH. That is right.

MR. BACA. And I wonder if you could tell us something of that process and some of the rough spots in the negotiations and Mr. Jim, if you could help, too, tell us how that was worked out and how it came to a conclusion?

MR. MUTCH. Certainly. I think it is necessary to tell just a little bit of history. In the past, individual Indians have not been well treated by some of the department heads within the city. This has generated a certain amount of bad feeling on the part of Indians, understandable bad feeling. As a result, it has been somewhat difficult up until a few years ago for the city of Toppenish, the council of Toppenish, to communicate with the tribal council. Now, we had a change in form of government about 5 years ago going from a three-man commission to a seven-man council-manager form of government. At that period of time, since that change, we have made a few, emphasizing a few, attempts to get in better touch, better communication with the tribal council. Our attempts have up until just recently have not been well received, or ignored might be a better word for it.

To answer your question specifically, several years ago, in fact probably about 5 to 6 years ago, it became apparent that Toppenish needed a new sewage treatment system. Going through the usual governmental agencies in the planning stages, we attempted to contact the tribe on, I believe, five occasions with letters asking them to participate in the planning stages, trying to anticipate their future needs for this facility. We were not able to get any response at all from the tribe. The facility then went into construction stage after a great many difficulties, after taking almost 4 or 5 years, and it is still in the construction stage. We were then asked by a division of the tribal council if we would be interested in furnishing sewage treatment facilities to their elderly housing facility. We responded affirmatively. The council took action and made a formal resolution to this effect and responded affirmatively. We were then advised at somewhat a later date that the tribe was in the advanced planning

stages of building a sewage treatment lagoon rather close to the city of Toppenish. There was a petition circulated and a substantial number of people in the area who were concerned with the environmental impact of this statement protested the building [of] this proposed lagoon. At this point I did manage to appear before one of the public hearings that the tribe held and again reiterated the offer to provide sewage treatment service to the tribe. Other than the environmental factor, there's a considerable economic factor. The Toppenish treatment facility could be connected into and operated into at a much lower cost than could the independent tribal facility. After some deliberation on this, the tribal council decided to reconsider their plans for the lagoon and they have since, in fact, tied into our sewage treatment system. The details of this agreement were worked out quite closely by the tribal attorney as well as our city attorney and, as far as I know, it's working quite satisfactorily.

We are presently processing our sewage in our old facility and will be in our new one within 60 or 90 days or something, but the new hookup entails a great deal more than the original elderly housing complex that they were talking about. We are now anticipating that everything that they have planned for that area could use as much as 5 percent of our total capacity. This is not a great deal, but you must figure that somewhere in the future we're going to have to expand, so this means that the expansion of the sewage treatment plant will probably be moved up a few years because of this tie-in and because of the inability of the tribal council and city council to talk about it in the early planning stages. This was an error caused by poor communication which was caused by, I suppose, hard feelings on the part of the Indians because of the way they were treated in the past. It is my belief that these bad treatment policies of the city have long since ceased and that the Indians are treated fairly and equally with all other people that fall within the jurisdiction of the city.

MR. BACA. Mr. Jim?

MR. JIM. Yes, it would sound, you know, sounds pretty easy, it was done pretty easy, sounds that way, but it was not. As a member of the tribal council, I was strongly against tying up to the city because of our position of sovereignty in relation to property rights and the future annexation of our area to the city, so I strongly urged our attorney to allow the sewer line jurisdiction, and we talk about jurisdiction, and it is in many forms. It is not only in the form of, say, now we'll provide services for you. It is a matter of assuming the right to tell you when you could use it and when you can't, so that was the things that we had to decide among the councilmen, whether we would allow the city to have jurisdiction beyond their city lines, so we told our attorney to stop it right at their city lines and then we would assume the jurisdiction from there to our hookup, wherever it was going to be. So we had that discussion among the councilmen and agreement before the final negotiations with the city, but prior

to that, in respect to our own laws, our own rules, our own ordinances developed by the tribe for our land use and our own zoning, and we felt that we had the right to develop something for our own benefit, future development of our complex that we are now contemplating utilizing the city solid waste or the waste disposal unit that they are developing. But prior to that, we felt that we would have our own because we are developing a lot more than just an office complex and senior citizens housing and museum complex and then future a shopping complex and possibly in the future a big pavilion for recreation use.

Those are in the planning of the body of the Yakima Nation near the city of Toppenish. And in my feeling that I did not want any encroachment upon that right that we had to decide for the benefit of our people, so, therefore, I was opposing it until the crunch of monies. If you don't have monies you cannot do anything, so I ended up having to compromise, as one of the leaders I had to compromise and say, "Okay, let us work with our neighbor." So that is one hard way to finally come to agree to work together. It may be that type of feeling throughout Indian country because of the past that Mr. Mutch mentioned. It is a very evident feeling in and around Indian reservations, especially around cities that have to live off the economy; the Indian people; the things that the Indian people have; tribal dividends, lease incomes, and other tribal income that is spent in those cities, and, if they are not treated right, they will go spend it somewhere else, which happened to Toppenish during the time that Public Law 280 and State jurisdiction was being opposed by the Yakima Nation and was being imposed on the Indians by the city of Toppenish in very drastic methods which really hurt the Indians. So the Indians moved, and Toppenish was a ghost town for a while, but today, I think, that with people like Mr. Mutch is saying, having a different attitude, like Mr. Rich, maybe there will be little bit better feeling between the neighbors within an Indian reservation.

MR. BACA. This is sort of general question to any of you. I get the impression, I don't know that there was a particular incident a few years ago or that there was some specific change a few years ago, but each of you has discussed what used to be and what is now, talked in terms of it used to be different a few years ago and I wonder if there is some specific incident, series of incidents, what changed things? Any one of you, Mr. Rich?

MR. RICH. There's a lot that goes into the answer to that question that I'm not sure that I can fully answer it. Going back historically, there were several governmental acts that have created the situation that we're in today. We go back to the Lewis and Clark expedition on through to the Oregon Trail, which allowed white settlers into the area of the Pacific Northwest, going on to the 1850 Donation Act passed by Congress; 1853, Isaac Stevens was appointed the custodian of the Washington Territory; 1855, we had the Walla Walla Treaty Council. That treaty, I don't mean to be redundant in talking about

treaties, that treaty ceded from the Indians a significantly large portion of land and retained for them a smaller portion, that known as the Simka Reservations, now known as the Yakima Reservation, some 1,800,000 acres currently, the original holdings of the tribe being 10,800,000 acres. The treaty was signed in 1855 at the Walla Walla Council. However, there was a 4-year period before that treaty was ratified by the Senate and the President of the United States, a 3- or 4-year period. There were some white settlers within the exterior boundaries. The fact of the matter is it was encouraged that some sort of settlement take place there. [In] 1891 along came the Allotment Act which again created a situation of dispersement of lands from Indian ownership to potential non-Indian ownership within the exterior boundaries. It was closed off, I believe, 1941, if I'm correct. Additionally, the current situation is that of the 27,000 people residing within the exterior boundary, 80 percent of those folks are non-Indians.

MR. BACA. Could you repeat that?

MR. RICH. From the 27,000 approximate numbers of people living within the exterior boundaries, 80 percent of those folks are non-Indian. That brings us to the present where, subsequent to the Allotment Act, the current tribal ownership of land there is 860,000 acres, leaving a balance that goes to non-Indian ownership within the exterior boundaries. Listening and viewing what has gone on in other parts of the country, I don't think that there was a particular act that precipitated the closer, or the development of closer relationships that we now experience other than there was a whole lot of things going on around the country that probably didn't make much sense to any of us, Indians or non-Indians alike, and to avoid that a simple manner and simple line of communication needed to be developed and that needed to be overtly cultivated, overtly, the going out and talking with our neighbors.

I think that is what is probably brought us to where we are. I think that we are fortunate in Yakima County in having what I categorize as a responsible tribal council, a body of elected officials that respond to their needs and identify with our mutual needs. We have—Roger has talked about it briefly—the issue of land use planning. That's not a national issue. It has no significance in Washington, D.C., what we do with a minimum lot size in Yakima County or on the Yakima Indian Reservation. It has extreme significance to the four of us sitting here.

A long time ago, and maybe I would like to throw a quotation at you that indicated the situation as it was, "the blundering, oftentimes treacherous administration of Indian affairs conducted from the seat of power 3,000 miles away is the most discouraging, disgusting failure in the history of the American Government."

The interesting thing about that quotation is that it was written in 1913 by Mr. McQuarter, who was that individual involved in tribal government at that time, attempting to make change and attempt-

ing to develop better relationships. The disheartening thing is that quotation seems to apply today. I think that we and us that are closest to the problem seem to react to the problem and attempt to address it. I don't think that some sort of omnibus legislation from the Federal level is going to help us a bit. I think that we have to identify mutual problems. I think that we have to sit down and develop the course of action that will reach a solution. In our planning process, we've shared our planning staff with the Yakima tribal planning staff, a couple of the cities within the exterior boundaries that are landlocked by the reservation boundaries have very limited room for growth, and you well know cities are growing by leaps and bounds these days. With no room to grow, it is a tough situation. We intentionally left out of the Yakima County comprehensive plan, just recently adopted, entire section of the land within the exterior boundaries. That's one-third land mass in Yakima County. We left it out because there has not been the time to sit with tribal planners, to sit with tribal council members and representatives of the cities within the exterior boundaries and develop what we wish the course of land use direction to be for the future. It is also very interesting to note that the board of commissioners have adopted a 2-acre minimum lot size in agriculture zones; tribal council, a 5-acre minimum lot size. The interesting part of that is that we find both of us dissatisfied with that minimum lot size in an agriculture zone. I think the conversations will lead up to the development of at least some uniform zoning. The question is not in my mind particularly who administers a given ordinance or rule or regulation. The important thing is that it is a uniform rule that applies to everyone equally, and that everyone has an opportunity to access or key to the information and development of that particular ordinance. That's the important thing, but I don't think there's one particular issue that has any significance that has brought us closer together, only the willingness on all our parts to come closer together and to attempt at the local level to resolve the problems that we have.

MR. BACA. Mr. Jim, a while ago, at least when you began your comments, you said that with the election of Mr. Rich and I think you referred to Mr. Mutch, as well, being sort of, or having a new attitude or representing a new attitude about relations with the tribe. Is there a change in the tribe, too, in its perception of how it ought to deal with its neighbors?

MR. JIM. I could not speak for all the other 13 members of the tribal council.

CHAIRMAN FLEMMING. I realize that.

MR. JIM. But generally the feeling is, let's give it a try. You know, we're more forgiving than our neighbors are. We've withstood so much within our reservation. In respect to the attitude prior to these two gentlemen getting on, was that the Indian was nothing, the Indian didn't mean anything but just a dollar sign, because of the

dividend payments, the income that they could derive off that Indian allotment, and the income that could come from the timber that was coming off the reservation and all that. That's all the Indian was until they started developing a tribal government, a tribal council to better address all the issues and stand before the various tribunals and saying that they are a government and can function as a government and are doing it. In this past 20 some years that Congress has finally at one time said, "We do not have that attitude that was started in the 1950s," and then, like yesterday, we had another bill introduced like restarting the same thing over again, the abrogation of any treaty. I feel that Congress had shown its trust responsibility to the Indian people when it says, "This is not our policy anymore. We are passing the Indian Self-Determination Act so that Indian people can develop and become viable governments that can take care of their own." I heard a gentleman this morning reflect on non-Indians on the Indian reservation. You heard Mr. Rich express that X number of people live on the Indian reservation, but still the law said that this land that you are retaining is for your full use and benefit for your members. That's what we are doing today as the tribal council in development of ordinances relating to land use. We have the zoning. We have a solid waste program. We have law and order. We have a water code, and we hope to develop a little bit further yet, in all areas, social programs that would better help our people where they are denied today because of lease income, because of tribal dividends that does not amount to but \$425 per individual and that denies them welfare, that denies the individual family that has maybe five children. They prorate that and deny an Indian family the right that they are supposed to get as citizens. We find that children are being sought and taken by non-Indians because of the dividend payment. The Indian child that is fostered or adopted comes back after he reaches the age of 21 to ask for his dividend if he still has it. He finds that he does not because of the system that they have to go through, the court system and the assistance from the Bureau of Indian Affairs under certain CFR [Code of Federal Regulations] regulations that allows foster parents or adoptive parents to dip into an Indian child's resources. Those are things that the Indian people are very much against today, and we feel that our neighbors must understand our position that we, as tribal leaders, elected by our people to serve them for a certain number of years are in the same category as the President being elected and on down, Congressmen being elected by their people to serve their people. We are doing that for them.

MR. BACA. Thank you, Mr. Jim. Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. I have no questions.

CHAIRMAN FLEMMING. I would like to ask this question, any member of the panel may want to pick it up. You have described

very effectively a very constructive evolution in terms of relationships between the tribal government and local governments. Are there policies, first of all, of the State government that either facilitate or impede this evolution, and then in the second place, are there policies of the Federal Government that either facilitate or impede this evolution? I appreciate those are both very broad questions and I certainly wouldn't expect to get an inventory of the policies either of the State or Federal, but it occurred to me that it might occur to you that there are certain policies of the State government which you might like to commend and certainly policies that you feel are getting in the way, the same thing as far as the Federal Government is concerned. I ask it because you recognize that the end result of these hearings is that we develop findings, recommendations which we address to the President and to the Congress.

MR. MUTCH. I guess I'd like to try that, Mr. Flemming, if I could. First of all in discussing policies of the State government, these are policies, but we must recognize that these policies are tempered by court decisions, they are not necessarily voluntary policies. I would like to refer to the taxation situation on the reservation.

In spite of the Supreme Court decision in the *Montana* case, the Indians still exercise what they claim to be their right to do business on the reservation with non-Indians and not collect State sales tax. This is a very sore subject with the local businessmen and with many people who understand our State tax structure. I see very few people that question the right of Indians to not collect sales tax from Indians. That does not seem to be the issue, even though it is with a few people, it is a very minor point. The big point is the failure of Indians to collect sales tax in their business enterprises on their reservations from non-Indians. This is creating a great deal of resentment and uncertainty.

Just recently the tribe has filed a suit claiming the rights to all water that flows into and on the reservation. This has created a great deal of fear and apprehension on the part of landowners within the reservation. I have one farmer who commented to me the other day, "I don't know what to do, but I think I'll borrow \$600,000 and drill three wells anyway, and to h— with the Indians." I'm upset with this attitude; to me it represents a backlash idea and I don't like it. The policy of the Federal Government within the last very few years has been to pour massive amounts of money into the tribe. This largely is earmarked—I will grant you it does not go specifically to individual Indians but to things such as the LEAA [Law Enforcement Assistance Administration] funds, which are 10 to 15 times what any other governmental unit will get. In the last 2 years, the tribe has gotten well over \$220,000 in LEAA funds plus a number of other specific grants. Additionally, in their new tribal complex, they received a low-interest loan with a guaranteed method of repayment of \$1.2 million. Under the EDA [Economic Development Administra-

tion] program, the city of Toppenish received \$321,000; the tribe received \$4.8 million, \$4.8 million for their Cultural Heritage Center.

I'm not saying that these payments are not needed or warranted because of the way the Indians have been treated in the past. That's not my feeling and not what I am saying. What I am saying is that the resentment among peoples in and on the reservation is building by leaps and bounds with these programs. They see what they feel is enormous preferential treatment to the tribes and maybe this treatment is warranted and they have been wronged in the past. I don't know what the final price tag should be, but the price tag is being paid today with enormous Federal grants and through, as I mentioned, this indirect State subsidy by allowing them to do business without collecting a sales tax. The point of my remarks is this: I believe that there is building a white backlash effect. I sincerely hope that it will not come to an armed confrontation with this farmer, who borrowed \$600,000, finds the tribal police try to cut off their wells, if it comes to that. What I am concerned about is the tremendous amount of pressure that these people will bear on their legislators asking them to hastily pass legislation to deny the Indians of these sources of income. I feel that hastily passed legislation, and I think the panel will agree with me, is generally unwise, and yet, I see this coming. I think this is a very real spectre that has to be faced.

Mr. Jim just mentioned a piece of legislation that was introduced yesterday, anyway just recently introduced. I believe it had to do with termination of reservations. This is unfortunate. It is unwarranted, but it's the extreme that I see coming in the near future unless something intelligent is done and I disagree with Mr. Rich, he says legislation is not the way to go, I believe it is. I feel we need legislation at the Federal level to define the areas of authority.

Mr. Jim has mentioned the sovereignty of the reservations. I believe it is necessary to define the sovereignty which Mr. Jim just referred to. Representative Meeds used a definition which I think sounds to the point. We must decide whether the sovereignty granted to the tribe is a purposive sovereignty that is granted for the purpose of ruling over the Indian people and taking care of their needs within the reservation or whether it is a territorial sovereignty that is giving them absolute right, such as an absolute sovereign within its boundaries. In this consideration my feelings, I think, are quite clear. The Indians represent a minority, a 20 percent minority on their own reservation, and I think we must recognize that the Indians do have a right to rule their own people, they do have a right to determine the future of their people. They may need help from the Federal and State governments, but they have this right. I question the right in many matters concerning the non-Indian on the reservation. I'm sorry I wandered from your question, but I have tried to answer it.

MRS. YALLUP. I would like to add something to this. I'm glad Mr. Mutch stated what he did about the taxes because this goes back to what I first said about not being understood. The Indian people—the Indians pay taxes, we buy a license, we pay for our cars to be on the road. Many of us do not shop in the city of Toppenish or where we do not pay a sales tax. Many of us shop in the cities like here in Seattle and we do have taxes going into the State of Washington, and when people in the State level make it sound like all that money that is coming from the State is not being helped, being put there by Indian people, then they are completely wrong and that kind of attitude gets out to the general population. We have money in the State, too.

CHAIRMAN FLEMMING. Mr. Jim, do you want to add to this discussion?

MR. JIM. Mr. Chairman, the panel, and Mr. Mutch, in respect to the ability of the present organization known as the Yakima Indian Nation to be able to lobby or to be able to knock on doors to get funding for whatever purpose it wants and getting it must be very much envied by my neighbor, but do you realize that that dollar that is derived by that tribal organization is spent right there for material, for wages, and for developing that economic base for that area? More specifically Toppenish, because it is just right next door to us. We have the biggest CETA program, that like Mr. Rich mentioned, we're part of the Eastern Washington Consortium that gets a large amount of employment dollars that comes to it, and I think there's a payroll that goes out once every week that benefits not only the city of Toppenish, Wapato, and other little towns in the reservation and the Yakima and as far away as Seattle, the dollars that is derived whether it's through Federal, State, or local, or more specifically to say that the Yakima Indian Nation provides \$78 million out of its farm lands, whether it's Indian or non-Indian, that goes into the economic circle within this State. Whether it is spent there on the reservation or elsewhere, but that's tax dollars derived from Indian land and from the Indian reservation. Seventeen million dollars income from the timber goes out and I think it is multiplied, I'd say economists said it is multiplied about eight times after it leaves the reservation in tax-dollars. Tribal income from leases goes out to the local community spent by Indians for whatever purpose, whether it is buying gas, buying groceries, or whatever purpose they spend their money for, derives the tax dollar for that local area and for the State and for the United States. In fact, it is a revolving thing with \$4.8 million that is going to come into the Yakima Indian Nation to develop a museum, cultural center, the dollars that is going to be derived there from that time when that building is finished by tourists coming there, by people traveling and stopping at Toppenish, it is going to be tax dollars, and who can say that Indians do not help out in providing.

CHAIRMAN FLEMMING. In connection with one of your comments, on the CETA money, you deal directly with the Department of Labor?

MR. JIM. Right.

CHAIRMAN FLEMMING. Under that law. Is this also true on the LEAA, do you deal directly with the Department of Justice on the funds that come in under LEAA?

MR. JIM. We had to appear before the law and justice committee to derive some money for one of our programs now, and prior to that, there was some monies coming direct and through the State.

CHAIRMAN FLEMMING. All right. Mr. Rich, would you like to comment on that?

MR. RICH. Yes, thank you, Mr. Chairman.

On behalf of the panel—or better yet, I'm pleased that your questioning has precipitated the dialogue which you are hearing today. As stated earlier, we come as friends and we will leave as friends, and it is not a defensive dialogue, but I think that is very important, it typifies the kind of relationship that we have.

CHAIRMAN FLEMMING. Right, very important.

MR. RICH. Very important to me. The question is, or one of the concerns we have with State and Federal regulations or policy concerning Indian relationship and the money that—products of those policies and regulations. Mayor Mutch has touched on some areas of concerns that he has, Roger Jim, Martha Yallup, and others, I don't know whether we're allowed to enter things into evidence, but I do have a document which I would like to present which I think is important.

CHAIRMAN FLEMMING. Very happy to receive it. We respectfully request that it be entered into the record.

MR. BACA. Mr. Chairman?

CHAIRMAN FLEMMING. Without objection, we'll enter it into the record at this particular point.

MR. RICH. The document is *Land of the Yakimas*. It is the most recent edition of the booklet that summarizes significant historical elements, the current economic developments within tribal government, and the current political structure of the tribe itself.

CHAIRMAN FLEMMING. Thank you very much.

MR. RICH. I would hope with its reading it would give you an appreciation of what we go through, we, all of us, in Yakima County.

Mayor Mutch has mentioned the Federal dollars that come into the tribe. The book will reflect some of the positive things that have been done with that and with those monies in the way of economic development. The tribe and Indian people, as Roger Jim has indicated and Mrs. Yallup, they do pay taxes. Fred Mutch is a businessman, he pays his taxes, and Indian people are taxpaying

citizens who recognize that responsibility and obligation and fulfill it.

Indians don't live in tepees anymore. They live in homes, houses on the reservation. They have the same problems that you and I have with economics, with standards of living that cross entire bounds. With regard to State policy, I think the biggest concern that I would have, and the first concern that needs to be addressed is not one of what the rules are or how they are enforced, but it is one of attitude. It is one of the importance of recognizing the distinct identity of the extended family of the Indian nation and treating it as such. It is one of recognizing the treaties, what they say, what they stand for. It is often brought up that the treaties are an unconstitutional document, they go contrary to the United States Constitution. My opinion in analyzing that is that if they are unconstitutional, it is very interesting that all of the treaties were ratified by the Governors, the Senate, and President of the United States of those periods.

I think that with regard to Federal policy, again going back so I can clarify the question of legislation at the Federal level, the comment being that I don't think omnibus legislation is the solution to the problem. I think there's going to have to be legislation to solve some of the problems that confront us, some of those problems are in the courts, but I think that legislation has to be fostered and developed and the content of that legislation looked at very closely but fostered and developed at the local level between the cities and the Yakima Reservation, between Yakima County and the tribal council. Our situation is not at all like the situation in Montana, the situation in the South Dakota or other parts of the country. Our situation is distinctly unique and rightfully so. We're a distinctly unique part of the United States and if legislation is going to be developed, it has to be developed along those lines. I think the Federal Government cannot continue to buy Indians off with Federal funding. I think the Federal Government is going to have to recognize its responsibility in the funding of local governments, which include, in my estimation, tribal councils.

The law and justice committee that Roger Jim alluded to is the county law and justice committee that the Yakima Tribal Council had to come before for ratification. In addition, we have the council of governments that has an 95 review process for all State and Federal funding, which all projects are supposed to come through.

I think that what Fred Mutch mentions is backlash and that concerns me very, very much as an individual, that backlash is going to take place as a result of certain demands that are taking place around the country. You're going to have an extremely adverse effect on the positive relationships that have been developed within Yakima County between Indian and non-Indian. Yes, there's some fear on the part of non-Indians residing within the exterior boundaries of what are the Indian people going to do to us in the way

of taxation, what are they going to do to us in the way of water rights, what are the new eight points of jurisdiction going to mean? Common sense dictates what generally occurs between reasonable and responsible men and women.

Questions of law enforcement, I don't think that the Yakima County Sheriff's Department or the Yakima Tribal Police Department look at a map and determine whether it's trust or deeded land involved or whether or not the individual involved is Indian or non-Indian before they respond to an emergency situation. It may very well be that after that response is made, the situation brought under control, that prosecutors involved in local, State, and Federal government may have some discussion as to wherein the jurisdiction for prosecution lies, but the response and that service is there and there's no question.

I think that building of roads, those kinds of tangible things that we recognize, all relate to the question of jurisdiction. Certainly the Yakima Indian Nation and its tribal council would be in no better economic position than any other local unit of government in this country today. They can afford to do no more than Yakima County can afford to do. We can only afford to build so many miles of roads on our tax base. We can only provide a certain level of service. The taxation question keeps coming up over and over again. I have yet to hear the Yakima Tribal Council membership indicate any taxation intent. However, if that were the intent, if that were to come to pass, it is my opinion that other forms of taxation would have to be suppressed. The Constitution of the United States limits regressive taxation to some degree so that if they implement a tax, some other tax will have to give.

With regard to backlash, I had the privilege of representing Washington State with National Association of Counties, Indian Affairs Task Force, which is reaction to the "Captives in a Free Society" done by the Indian Review Policy Commission, in order to allow local government to have a particular input into that and offer what we would hope would be our policy. In encountering that, it is what I alluded to earlier, a meeting was held at Montana drawing county commissions from throughout the country, significant representation and crosscut of representation there from throughout the country. During those proceedings there was a comment that was made by an attorney that typifies himself as an Indian fighter. He equated what is going on in Indian country, the attempts to do certain things, to and I quote, "the big lie which Nazi Germany foisted on Europe before World War II." Those are the kinds of comments that if I made them Roger Jim would be unhappy with me, but those are the kind of comments that is going to create a situation that is going to become volatile in this country and that until tribal members and tribal councilmen and tribal councilwomen sit down and talk with county commissioners and other elected officials in their local jurisdictions, we are going to have a problem in

this country that is going to be the most significant racial issue in the history of the United States. It could be dangerous and lead to opening the door to significant situations that I think none of us would want to be here to address and none of us would want to have to be a party to.

CHAIRMAN FLEMMING. I'm going to ask one final question which time will only permit just a very quick response to it, but earlier in your discussion, I think Mrs. Yallup identified the fact that children and young people attending the schools in your particular area do not have the opportunity of coming to understand the Indian community, they do not have the opportunity of coming to understand the tribal government along with other types of government. Are efforts being made to correct that situation and is some progress being made? In other words, are you finding it possible to get into the curriculum the kind of material that obviously has not been in the curriculum in the past so that you can develop among children and young people a better understanding and a better appreciation of the situation that you have described so effectively to us today?

In other words, I'm interested, if anything is happening, then if you would like to present something that is happening to us, why we'll be glad to have it for the record later on, but we've just got 5 minutes here so I would like to get a feel of that.

MRS. YALLUP. One of the things that the tribe is doing right now, we have established a division of education. We are addressing problems starting with prenatal clear to adult ed., age being no barrier. We feel it is our responsibility to know what is happening in the schools. It is our right to be in there helping be advocates for our children and for our families. We have instituted a program that we call tribal liaison representatives who will be working directly under the division of education. They will be going into the schools working with teachers, parents, and children and superintendents and principals. We have a resource center established where we check out materials to the public school resource rooms. We have another program set up in media where a lot of the Indian cultural curriculum materials are being checked out by schools. We have an Indian language project going right now that is developing curriculum K through 12 and which we hope to get instituted into the school systems. There are eight school districts that our children are attending. We do have 1,800 Indian children enrolled in those schools.

CHAIRMAN FLEMMING. Do you feel that the eight school districts are responding to the opportunities that are being presented in terms of curriculum materials and so on? Do you note—

MRS. YALLUP. Some of them are responding. The biggest problem that we are facing right now is with individual teachers.

CHAIRMAN FLEMMING. In other words, individual teachers who themselves have never been introduced to this way of life and to—

MRS. YALLUP. Individual teachers whom we have invited to come to the education center to meet with our education staff to see how we could help them. We ourselves have taken a multicultural approach to education and we had hoped that that kind of approach would get into the school systems. There is resistance on the part of some teachers who feel that they've learned it all in college and they know it all already and, therefore, their day begins when they hit the school system and ends when they leave.

CHAIRMAN FLEMMING. We understand that. A number of you want to—Mr. Mutch, and then Mr. Jim.

MR. MUTCH. Adding to what Mrs. Yallup says, I have the formal report from Dr. Jerry Hosman, superintendent of Toppenish School District 202, that it entails a good deal of the agricultural area as well as the city proper itself. In 1967, the staff of the Toppenish School District 202 was 1 percent Native American, the student body was 14.5 percent. In 1976, 9 years later, the staff was 5 percent Native American, 13.5 percent student body; in other words, there has been a fivefold increase from 1 percent to 5 percent of the teaching staff in the last 9 years.

CHAIRMAN FLEMMING. Does this report indicate whether anything has been done in the way of introducing into the curriculum materials that would give people a better understanding of the Indian community and of the reservation and the tribal form of government and so on?

MR. MUTCH. This report, no, but I have personal knowledge that they are through Federal funding going into a YES program or they have been in for the last 3 years, Yakima, English, Spanish. We have a very large Spanish minority within our city and the school has this funding and they are doing it, yet—

CHAIRMAN FLEMMING. What I'm personally getting at is a comment made earlier that in the history course, typically, no reference was made to the tribal form of government, and I'm just wondering whether materials of that kind are finding their way into the curriculum?

MRS. YALLUP. We are working on those and we do hope to get those instituted. The other thing that I think I need to make clear on the Cultural Heritage Center, we do have a full-service library in plans which will be available for use not only by the community but by the schools, and we hope to bring school children and their classes into the library, and we hope to have our Indian resource people available to help do some of it.

One of the points I would like to make is that we are having a hard time getting professional teachers into the school systems. We have no problem getting Indian teacher aides or paraprofessional people, but it is the professional people that we would like to get in there, and we need to get in there.

MR. JIM. One short comment in regard to the mention of backlash. I have one of our papers here I would like to submit for the

record. It is kind of a chronological report of what they call a backlash.

CHAIRMAN FLEMMING. Without objection, we'll be very happy to enter it into the record as an exhibit at this particular point.

May I just tell the members of the panel how much we appreciate your coming here and providing us with these insights, the way you've made your presentations, the way you've dialogued with one another has given us a feel of the situation that we couldn't have obtained in any other way, and certainly I, at least personally, I come out of this particular experience with a realization that there are some constructive forces at work and that you are getting some results even though I know all of you appreciate that you've got a long distance to travel. I'm going to—

MR. JIM. I have one short comment with regard to education. Here is a quote from a person writing to a newspaper saying this. He says:

What could I say to my children about their country which has made a solemn covenant through these treaties and now proposes to disregard that promise? The shame will kill any spirit of a people with self-respect. Let us see this proposal for what it is, a larger society moving in greed to grab what yet remains from an aboriginal people.

That's a quote from a newspaper made by a non-Indian.

CHAIRMAN FLEMMING. Thank you very, very much.

MR. RICH. Can I have one final bit of input? For the record, we would appreciate your bringing the hearing to us. That kind of thing is needed more. If you return and make recommendations for some sort of national legislation, I would encourage that that legislation, if at all possible, mandate cooperation at the local level.

CHAIRMAN FLEMMING. Okay. Thank you very, very much.

The hearing is in recess until 1:45 where we will resume.

AFTERNOON SESSION

CHAIRMAN FLEMMING. I would ask counsel to call the next witnesses, please.

MS. HOWITT. Mr. Wilson LaMere, Mr. Jeffrey Sullivan, Mr. John Mesplie, Mr. Robert Wilson, and Mr. Peter Hoyt.

CHAIRMAN FLEMMING. Those whose names have been called will move forward to the witness table, please.

I would ask that the names of the witnesses be called again.

MS. HOWITT. Mr. Wilson LaMere, Mr. Jeffrey Sullivan, Mr. John Mesplie, Mr. Robert Wilson, and Mr. Peter Hoyt.

CHAIRMAN FLEMMING. Come forward, please.

Where are the witnesses?

MS. HOWITT. They were here this morning.

MR. ALEXANDER. Let's begin, and we can send for the other two.

CHAIRMAN FLEMMING. Let's make sure they haven't come in.

MS. HOWITT. Mr. Sullivan and Mr. Wilson.

CHAIRMAN FLEMMING. If you would stand and raise your right hands, please.

[Messrs. Hoyt, LaMere, and Mesplie were sworn.]

TESTIMONY OF PETER HOYT, CHIEF CRIMINAL DEPUTY, YAKIMA COUNTY SHERIFF'S OFFICE; WILSON LAMERE, CAPTAIN, YAKIMA NATION POLICE FORCE; AND JOHN MESPLIE, CRIMINAL INVESTIGATOR, BUREAU OF INDIAN AFFAIRS.

CHAIRMAN FLEMMING. We appreciate your being with us.

MS. HOWITT. Good afternoon, gentlemen.

Would you be kind enough to state your name, address, and occupation for the record, please? Let's start with Mr. LaMere.

MR. LAMERE. Captain Wilson LaMere, from the Yakima Nation Police Force, Toppenish, Washington.

MR. MESPLIE. John Mesplie, criminal investigator for the Bureau of Indian Affairs, Toppenish, Washington.

MR. HOYT. Peter Hoyt, chief criminal deputy for the Yakima County Sheriff's Department, Yakima, Washington.

MS. HOWITT. Gentlemen, beginning with Mr. LaMere, I was wondering if you would be kind enough to just for the moment discount the concept of cross-deputization, and explain to us your jurisdictional limitations, that is, the geographic limitations, the kinds of people that you have jurisdiction over, etc.

MR. ALEXANDER. Mr. Chairman, can we swear the two additional members of the panel?

CHAIRMAN FLEMMING. All right.

[Messrs. Sullivan and Wilson were sworn.]

TESTIMONY OF JEFFREY SULLIVAN, PROSECUTING ATTORNEY, YAKIMA COUNTY, AND ROBERT P. WILSON, CHIEF, CITY OF WAPATO POLICE DEPARTMENT

CHAIRMAN FLEMMING. Mr. LaMere, proceed.

MR. LAMERE. Our jurisdiction is in mostly the field of misdemeanors on the Yakima Reservation. We approximately have a million point-plus acres of jurisdiction in a closed area of the reservation and also in the irrigated part of the reservation.

MS. HOWITT. Are you allowed to arrest non-Indians as well as Indians, sir?

MR. LAMERE. We ventured into a new field here not too long ago. We are arresting traffic violators on the reservation through a deputy commission from the sheriff's office. We do arrest them and take them to the court of their jurisdiction.

MS. HOWITT. I will repeat the question for those of you who have just entered the room.

Discounting for the moment any cross-deputization agreements that are currently in effect, would you please describe briefly the jurisdiction of your police department, that is, the people and the subject matter areas and the geographic boundaries?

Mr. Mesplie?

MR. MESPLIE. Since I am a Federal officer for the Bureau of Indian Affairs, my main basic enforcement is Federal laws and regulations. However, I do enforce tribal, State, and county laws. And this is through the cross-deputization. That is on the Yakima Indian Reservation within the exterior bounds of the Yakima Indian Reservation.

Ms. HOWITT. But without the cross-deputization agreement, what would be the limit of your jurisdiction, please?

MR. MESPLIE. As a Federal officer, we enforce certain laws against non-Indians in the areas of narcotics on Indian land and hunting, fishing, and trapping villages under the Federal laws.

Ms. HOWITT. Mr. Wilson, would you please indentify yourself for the record?

MR. WILSON. I'm Robert P. Wilson. I'm chief of police for the city of Wapato. My basic jurisdiction runs to the city limits over all crimes committed within the city limits.

Ms. HOWITT. That is over Indians, is that correct?

MR. WILSON. Yes.

Ms. HOWITT. Thank you, sir.

Mr. Hoyt?

MR. HOYT. The sheriff's department enforces all of the State laws within the confines of Yakima County, except the closed areas of the reservation, the State laws and misdemeanors, unless it should happen to be obvious that it is an Indian problem on Indian land and Indians are involved, and then we have to revert to our cross-deputization and just secure the scene until we can get some help from the tribe.

Ms. HOWITT. I see, but when you are enforcing the laws over the jurisdiction, it is Indians and non-Indians?

MR. HOYT. Indians and non-Indians.

Ms. HOWITT. I see.

Gentlemen, would you be good enough to describe for us the relation that you have as police officials—that is, how would you describe cooperation in the Yakima Valley? Mr. LaMere?

MR. LAMERE. In Yakima County, which the reservation is in—actually, it is in three counties—but our main contacts are with the sheriff's office.

In cases of heavy crimes, we don't wait for people to say whose jurisdiction it is. We go ahead and start investigating, and if it turns out to be county jurisdiction, we turn it over to them with all of our reports.

We have a Lower Valley Police Officers Association that consists of supervisory personnel. Once a month, we have meetings. They will

be in one town one month and probably in another town the next month. All of the supervisors get together and we discuss all of the problems of certain areas, and we do make personal contact with each other. And this involves the sheriff's office, the State patrol, the FBI, immigration, tribal police, and the Bureau of Indian Affairs. It is a pretty well-rounded-out representation of police organizations.

Ms. HOWITT. I see. Thank you.

Mr. Mesplie, would you agree with that characterization?

MR. MESPLIE. Yes. We have a very good relationship with the other police. We are known as the Indian police; and we have a very good relationship with the county, State, and city officials.

Ms. HOWITT. Mr. Wilson, would you agree with that assessment?

MR. WILSON. Very much.

Ms. HOWITT. Very much.

Mr. Hoyt?

MR. HOYT. I concur.

Ms. HOWITT. Concur. Wonderful. Uniformity. I see.

Do you gentlemen keep your records by ethnic background? When you arrest people and you keep records, do you have a breakdown by the race of the offender?

Mr. LaMere?

MR. LAMERE. We deal mostly with our Indian people. We do have records on the number of arrests on females, males, and juveniles and also if they're non-Indians.

Ms. HOWITT. Mr. Mesplie?

MR. MESPLIE. Yes. In the Federal records it is almost a requirement for the national statistical report that we turn in annually that the race of the person be mentioned.

MR. WILSON. Our yearly records reflect only in the juvenile area. It doesn't reflect in any other area.

Mr. HOYT. Ours do reflect the ethnic group.

Ms. HOWITT. Thank you.

Mr. Sullivan, there has been a tremendous—

MR. ALEXANDER. Ask him to identify himself.

Ms. HOWITT. Would you first identify yourself for the record, please?

MR. SULLIVAN. My name is Jeffrey Sullivan. I am the prosecuting attorney for Yakima County.

Ms. HOWITT. There is currently a case known as *Yakima v. Washington* which deals with the question of jurisdiction, and one of the eight points of jurisdiction deals with the area of law enforcement. Would you be kind enough to give us a little background and educate us about the decision known as *Yakima v. Washington*?
Yakima v. Washington

MR. SULLIVAN. The case of the *Yakima Indian Nation v. the Yakima County Commissioners and the State of Washington*, I think,

was begun in 1972. Essentially, that case was designed to attack the State's assumption of jurisdiction under Public Law 280.

As you know, and I am sure most of the Commissioners know, we assumed jurisdiction in the criminal area over non-Indians who commit crimes of any kind on nontrust land within the boundaries of the reservation and all Indians who commit crimes anywhere outside of the boundary of the reservation.

In addition, the State assumed jurisdiction over eight enumerated areas which were in the areas which were categorized by some of the decisions and, I think, the arguments by at least the attorney general and people in the State in those areas in which they were least able to care for themselves, at least at that time, and that being the domestic area, juvenile area, compulsory school attendance, welfare, and three or four more, but all in that social welfare context with the other areas in which we would assume jurisdiction.

That case was tried in the United States District Court for the Eastern District of the State of Washington before Judge Charles Powell. At that time Judge Powell—the Indian attack at that point was primarily on the basis of unequal enforcement of the laws, resulting in an unequal protection argument in that the laws were not being enforced uniformly throughout Yakima County and that the Indians were getting less than adequate law enforcement protection.

In that hearing, in addition to that, the other constitutional arguments that had traditionally been made in the two *Quinault* decisions were also thrown in by Jim Hovis, their lawyer. I think he would have admitted, at least at that time, that it was there because he wanted to bring it up again if it got to the Ninth Circuit and not because he had any really solid basis, because there were decisions against him at that point. He then—that case was argued and testimony was taken.

I think that two important things came out of the testimony: One, the things that John and Wilson and Peter Hoyt and Bob Wilson talked about, the checkerboard jurisdiction, does not cause the problems that many people think it does, at least in Yakima County. When a call comes in, it is responded to by whatever law enforcement agency gets the call, immediately. At that time—and they do initial investigation. If it is determined either immediately or after that that it is an Indian defendant or potential Indian defendant, that it is on trust land, then it is either turned over to John or Wilson or the FBI, depending on the seriousness of the offense.

If it turns out—if they investigate something and it turns out that it was on deeded land, it is very simple. They turn it over to the sheriff's department. They pick up the investigation.

When it comes to my office, it is prosecuted like any other case. The tribal policemen are called as witnesses, and it proceeds normally.

The other thing that came out, I believe, in the testimony—at least it was found by Judge Powell, and there was testimony on both sides—was that, yes, there was less-than-adequate law enforcement coverage in the lower valley of Yakima. Until you saw a map—and most of you who have been in the Yakima Valley understand the geographical differences between the upper valley, which is divided by a ridge called the Tannem Ridge and a gap, and you have the lower valley, which runs in a southeasterly direction.

But what came out was—in the county commissioners' testimony—was that there was a problem, but the problem cuts across everybody. It didn't impact the Indian on the Indian reservation anymore than it did the other 40,000 or so non-Indians who lived in the same geographical area.

Some other problems were pointed out at that time in a factual thing, the problems of Indians, the lack of Indian foster homes, and that sort of thing, but again on a factual basis, without going into much more detail than that, Judge Powell found we were not in violation of the law on that basis. That case was appealed to the Ninth Circuit, stayed up in the Ninth Circuit for a year. The Ninth Circuit then ordered the case be heard *en banc*. It was heard *en banc* in June of last year.

In January, we got an *en banc* decision. It decided two very important issues: one, that the constitution of the State of Washington did not have to be changed in order to assume jurisdiction, and secondly, that the partial assumption of jurisdiction by the State of Washington was constitutional. It was then remanded back to the three-judge panel, and the three-judge panel decided that the jurisdiction that is established by land title classification is, per se, unequal protection of the law and reversed that decision and nullified the State's assumption of jurisdiction. That mandate was stayed, and the matter was appealed to the Supreme Court, and they haven't decided whether they're going to hear it.

Ms. HOWITT. Earlier this morning, we heard the State attorney general, Mr. Gorton, say that although he had no objection to Indian people exercising jurisdiction over themselves, he did, however, object to Indian people exercising jurisdiction over non-Indians.

Do you gentlemen that are law enforcement officials believe such a plan is feasible? That is, how would you operate day to day in a situation such as that? Mr. Mesplie?

MR. MESPLIE. I didn't quite understand the question.

Ms. HOWITT. Well, this morning Mr. Gorton said that he had no problems with Indian people exercising jurisdiction over other

Indian people. However, he did have a problem with Indian people exercising jurisdiction over non-Indian people.

I think what we can assume is the concept of jurisdiction includes law enforcement. Now, you gentlemen that are law enforcement officials, how, on a day-to-day basis, would you be able to make such distinctions? For example, if you were called to the scene of a crime, and you, as an Indian person, an Indian law enforcement official, were not allowed to exercise jurisdiction over a non-Indian, how would you work that in a day-to-day situation?

MR. MESPLIE. I have never personally had any problems with arresting a non-Indian person for a violation of the law. I believe that our tribal police do this on a daily basis, writing traffic citations and citing non-Indians into the county courts for speeding and reckless driving and various violations of the State law. To my knowledge, they have had no problems. They could have. You might check with Mr. LaMere. He is the general supervisor for all of the tribal police. So he would know that better than I, probably, whether they have had any problems arresting non-Indians.

MR. LAMERE. I will respond to that. If you're driving down the road and you see a non-Indian coming down the road, drunk, driving all over the road—as one example—he had better arrest him. Or if we have a tribal celebration, all the Indian kids are there and all of the families and the kids are raising the devil around this Indian gathering, okay, the State law says they have jurisdiction over children or juveniles. We don't pay any attention to that. We take care of them anyway.

Those are some of the things I think referred to. If we were just to have jurisdiction over Indian people—there are too many people that live in the Yakima Valley. There are Filipinos. There are white people. There are Chinese and Japanese. You name it. We have a rainbow reservation there.

MS. HOWITT. I have no further questions at this time, Mr. Chairman.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Mr. LaMere, the statement that was made by the attorney general, who is the chief legal officer of the State of Washington, implies that at least the State officials have a different concept of law enforcement than was indicated by those of you who are appearing here now.

Would you have any suggestions as to what needs to be done to alleviate any problems with respect to the conflicting attitudes of jurisdictions?

MR. LAMERE. I have asked this question of non-Indians. How would they like our jurisdiction over them as non-Indians? And the reply was, "We wouldn't like it." Well, on the same token, as a tribe, we don't like it when the shoe is on the other foot.

I don't know whether I answered your question or not.

COMMISSIONER FREEMAN. I have another question I'm going to ask Mr. Sullivan, as the prosecuting attorney.

There have been allegations that there is unequal law enforcement in some instances. Let's assume there would be an allegation that if there was—if the victim is non-Indian and the person who engaged in the assault is Indian, there might be a different penalty than if the victim was Indian and the person who engaged in the assault non-Indian?

MR. SULLIVAN. I don't think that is true in Yakima. I believe every criminal defendant is treated the same by the court, irrespective of his race or the race of the victim. As we approach them, we don't worry about that. If restitution is due, it is due in either case. I just don't think there is any substantiation for that kind of allegation in Yakima County.

COMMISSIONER FREEMAN. Is there any, or, is there perceived to be any truth in any allegation, or could there be an allegation that if the—let's assume that it's a serious assault of even murder, that, if the victim is Indian and the perpetrator is Indian, that the penalty would be different than if the victim is non-Indian and the perpetrator is Indian?

MR. SULLIVAN. Well, first of all, if you had an Indian victim and an Indian defendant, then you would have to worry about where it happened.

COMMISSIONER FREEMAN. Assuming that it happened within your jurisdiction.

MR. SULLIVAN. Within our jurisdiction—again, I don't think that there would be any difference in the way we would approach the case.

COMMISSIONER FREEMAN. Then, in your opinion, it is not true that any Indians would perceive that if they would be the victim that the penalty would be different than if they happened to be the perpetrator?

MR. SULLIVAN. No, I'm not saying that an Indian could not perceive that the penalty was different, because again, he is the one on whom the punishment is being hoisted, and he is obviously going to look for reasons why he may have been treated differently than somebody else. And, yet, what I'm saying is that in my office, and I believe in the superior court of Yakima County, the ethnic background of victims and/or defendants is of no consequence in the sentences that are passed.

COMMISSIONER FREEMAN. I have asked this question, because we haven't heard such testimony here, but in prior hearings in which this Commission has been engaged and in which I have participated, there have been allegations that there were instances in which there were even murders, that persons were killed and that the person or individuals, and in some instances even perhaps law enforcement officials, who were charged with very minor offenses and in some

instances were not even convicted. Are you saying that that situation does not exist here in Yakima County?

MR. SULLIVAN. Yes, I believe that is so. Now, if Peter Hoyt and John and Bob and Wilson LaMere, who have worked in law enforcement in Yakima County substantially longer than I have, and if there have been instances of that kind which they have knowledge of, I would ask them to tell you about them. But I don't believe that that sort of thing is happening in Yakima County.

I think it's because of the cooperation. We all work in law enforcement. If there is a crime, we respond to it. We're not concerned about those sorts of things, except as they relate to who might have to prosecute it because of land title, but that is the same kind of jurisdiction we worry about in cities and counties.

COMMISSIONER FREEMAN. You don't have a problem with respect to a jury trial?

MR. SULLIVAN. I don't believe so. Again, I think that our juries drawn computerwide by computer now from the voter registration, and I would guess probably as a group that the Indian nation does not have, in percentagewise, as high a voter registration as maybe the non-Indians do. I am just guessing. I don't have any statistics on that. That could affect the number of Indians who would be called in any panel.

COMMISSIONER FREEMAN. Are you saying that the jurors must be registered voters?

MR. SULLIVAN. That's correct. In Washington, the jury panel is drawn from the voter registration list of each county.

COMMISSIONER FREEMAN. Do any of you other gentlemen have any comments?

[No response.]

COMMISSIONER FREEMAN. I have nothing further.

CHAIRMAN FLEMMING. I gather, from listening to the testimony of the panel, that the members of the panel feel that a system under which jurisdiction is determined by territory in which the crime or the alleged crime has been committed lends itself to more effective law enforcement than if you took the opposite position and said that the jurisdiction would be determined not by territory within which the crime or alleged crime took place, but was determined by a question of whether the person was an Indian or a non-Indian. Is that a fair conclusion?

MR. SULLIVAN. From my standpoint, yes, it is. I think that is exactly true. If you try and do it the other way, you have got more problems than we have now. I'm not saying the jurisdiction by land-title classification or territory is simple or that it's the only way, but when you start doing it totally on the basis of race you run into problems that maybe Pete and Bob can talk to when we did have it that way, when the Indian or non-Indian, who is reacting, particularly the Indian who is in the community, then the non-Indian law

enforcement has no authority to arrest him, and you call the tribal police—without the cross-deputization.

I think that we use it very effectively and continue to use it. This includes, although there is no member of the State patrol here, the State patrol detachment that operates in that area of Yakima County also holds deputy sheriff's commissions and tribal police commissions, so that they can respond to whatever situation confronts them on the road or whatever.

CHAIRMAN FLEMMING. The cross-deputization is important, whichever approach you take, in other words? You have got it at the present time. It's very important.

As I have listened to the other witnesses, it seems to me that the problems of law enforcement would become more complicated if you move away from the territorial approach. I understand some of you lived under the other approach. Do you want to comment on the experiences that you have had under the other approach as contrasted with the experiences you're having now?

MR. WILSON. I think John Mesplie or Wilson LaMere will answer that. I became a member of the police department right on the day the jurisdiction took hold.

CHAIRMAN FLEMMING. I see.

MR. WILSON. I didn't have the privilege of working under the old system. So, I honestly can't say. The only experience I have had with it is that we do contract the housing projects. There is a 90-unit housing project right on the edge of the city. Every member of my department is cross commissioned as a deputy sheriff and also tribal. We respond just like everybody responds to what is there—who is the closest—to get the job done. We work to get that job done. It is very effective.

CHAIRMAN FLEMMING. Any other comments to this?

MR. ALEXANDER. Mr. Sullivan, as you described the prior system, you had a situation with the Yakima Tribe prior to Public Law 280, and mostly at that point, I assume it was the Bureau of Indian Affairs Police was not exercising jurisdiction over non-Indians. Now, if you would—

MR. SULLIVAN. That's correct.

MR. ALEXANDER. If retrocession were to occur or if the Supreme Court would either affirm the Ninth Circuit's decision or refuse to grant *cert.*, you might possibly be in a situation where the various law enforcement agencies might be exercising jurisdiction over both Indians and non-Indians, depending on their particular parameters.

Do you have a similar problem to the attorney general at all with the mention of the Indian tribe and their law enforcement agencies exercising jurisdiction over non-Indians?

MR. SULLIVAN. My personal feeling is that it is twofold. Right today, most Indian tribes in the State of Washington—the Yakimas probably more so than most of those—do have some capabilities for exercising that kind of jurisdiction. They have a tribal court. They

have qualified judges. They have a prosecutor now, or will have. They have a defender. They're putting together a tribal court. I can say in that regard we are working with them to help them do that, should jurisdiction be returned.

My own personal view is that the Indian jurisdiction should still be limited to Indians on Indian land—excuse me—not Indian, to Indian land, both non-Indians and Indians. If a non-Indian goes into a closed area of a reservation, he should be able to be prosecuted by the tribal police.

MR. ALEXANDER. When you say Indian land, you are making a distinction between land held in trust status and all lands within the exterior boundaries of the reservation?

MR. SULLIVAN. That's correct.

MR. ALEXANDER. What is your, either legal or political, reason for that distinction?

MR. SULLIVAN. I think probably, it may be quasi-legal, probably more political.

The non-Indian who came onto that land at the invitation of the government, whether the government was wrong or not is something that has to be decided by the courts, whether they had authority to invite the non-Indian on and sell them that land, that again is an issue, I think, that has to be decided by the court.

What I am saying is that we have 22,500-plus non-Indians who live on deeded land. They purport to have a deed to that land that was issued to them by the United States Government. They have developed that land, etc. They expect to have a voting right in the government that controls that land to which they hold the deed.

If I live on trust land, I know I have no right to it. I can't expect to vote to how that land is going to be controlled. But the deeded land, I think the non-Indian—

MR. ALEXANDER. Are you saying that the non-Indian who is on fee land in Yakima or perhaps any other reservation was misled or had no understanding that they were within the governmental authority of an Indian tribe within their reservation boundaries as Indian country is defined by the United States Code?

MR. SULLIVAN. Sure. I don't think there is any question about that. The reason I say that is that most of these people, at least the greatest majority, came on this land many, many years ago before there were effective tribal governments. They thought the Bureau of Indian Affairs was running—

MR. ALEXANDER. So we don't mislead, for one second, perhaps, to be historically accurate, it would be after a time when tribal governments perhaps by the operations of the United States had become less effective.

MR. SULLIVAN. I'm not saying, again that—what I am saying is that as perceived by the person coming onto the land, the farmer, the guy who came out there and said—he was not aware of exactly what was going on. I think in that sense he was misled.

MR. ALEXANDER. One very last question—

CHAIRMAN FLEMMING. Did you want to say something?

MR. SULLIVAN. The only thing I wanted to say is the problem I perceive is that non-Indian—it may be a distinction without a difference.

I understand what Wilson says; the Indian people says, “I don’t want to be judged by your judge,” and the non-Indian saying, “I don’t want to be judged by the Indian judge.” And the sovereignty issue is there, too.

The only distinction is that the non-Indian who comes on and lives within the exterior boundaries of the reservation on deeded land, he has a vote on that district court judge who is going to pass judgment on him. The Indian who lives on deeded land or on trust land has that same vote. If we go to a jurisdiction that includes the exterior boundaries of the reservation over the non-Indian, the one significant difference is that he has no vote in that government that, one, may tax him, and two, a court may judge him, and three, may control his land under land use planning. That is what I think is the problem.

MR. ALEXANDER. Just one final question: that would be the one distinction you would make, as a lawyer. You would acknowledge that all other due process and equal protection rights in relation to the operations of tribal government would be applicable. The person would have not only the appeal through the Yakima tribal appellate court system, but into the Federal district court and so on.

MR. SULLIVAN. Right. No question about it. The Indian Civil Rights Act would apply. I have read it.

The only other thing I would like to say, if I could, is I would hope that this Commission, before any recommendations are made, would go and look at some of these reservations.

I think this is essentially what Mr. Rich was saying. I think legislation is what needs to be done, but there is a significant difference between both the physical makeup in terms of area, the people who live on these reservations, the size of the reservation, and I get a feeling from courts in particular who have written these decisions, that some of these judges don’t have a concept as to what a reservation is in today’s society.

It seems to me that is very important to know that they all have individual and distinct characteristics, and the omnibus legislation is going to be very unworkable, I believe, when applied to this particular problem.

COMMISSIONER FREEMAN. Mr. Sullivan, I visited a reservation yesterday. What I would want to ask you is, if you have a copy of a deed to which you are referring, any deed to which you are referring, if you could submit a copy of that—and Mr. Chairman, I would like that inserted into the record at this point—but we are not without knowledge of the land, what the land looks like on a reservation. As I said, I was at the Lummi Reservation yesterday.

MR. SULLIVAN. Thank you. I will make sure that you get a copy of a deed.

CHAIRMAN FLEMMING. Thank you. We would appreciate that very much. Without objection, we will include it in the record at this particular point.

We do thank you for coming in and sharing your experiences and your views. We want to thank you very, very much.

Counsel will call the next witnesses.

[Mr. Doherty and Ms. Elofson and Hottowe were sworn.]

TESTIMONY OF MIKE DOHERTY, CHAIRMAN, CLALLAM COUNTY COMMISSIONERS; EDITH HOTTOWE, VICE CHAIRWOMAN, MAKAH TRIBE; AND PATTY ELOFSON, CHAIRWOMAN, LOWER ELWHA TRIBE

CHAIRMAN FLEMMING. Thank you.

MR. SCHWARTZ. Will you each please state your name, address, and tribal or government affiliation for the record, please, starting with Ms. Elofson?

MS. ELOFSON. I'm Patty Elofson. I'm chairwoman of the Lower Elwha Tribe. My address is Route 3, Box 420, Port Angeles, Washington.

MR. DOHERTY. My name is Mike Doherty. I'm currently the chairman of the Clallam County Commissioners. My address is care of the Courthouse, Port Angeles, Washington 98362.

MS. HOTTOWE. My name is Edith Hottowe, vice chairwoman of the Makah Tribe, Box 615, Neah Bay, Washington.

MR. SCHWARTZ. Thank you.

MS. ELOFSON, one of the areas that this Commission will be particularly interested in, and there will be more testimony on in the area as we proceed with the hearing, involves the area of child care services, foster care, and adoptive care and the whole panoply of issues that goes along with the general area of child welfare.

I know that you have your own personal story about your involvement with the State child welfare system, and I would like to start just by getting that on the record, your own personal involvement with the State in this matter.

MS. ELOFSON. You're talking about after my mother died?

MR. SCHWARTZ. I'm talking about your own personal upbringing and how you came from—not from birth—but let's say from a young child when you did have your first encounter with the child welfare services of the State to the point where you became the tribal chairwoman for the Lower Elwha Tribe.

MS. ELOFSON. Let's see, when I was about 7 years old—I guess it was about 1958 and '59—and my mother was extremely sick, and there were eight children in our family. One of them had been adopted as an infant, so there were seven of us living in the home.

My mother became so ill that we were all placed in foster homes, and then she was hospitalized and died. So, immediately after that

we were put into—split up and several members of my family lived with relatives. I did for a little less than a year. And then I was placed in a non-Indian foster home in Port Angeles. I lived there until I was—I think I was 15 years old. It was a foster home that, in terms of a placement, was not a very satisfactory one for me. I just felt like it was a room-and-board type of a situation. There was not any kind of human, close relationship with the members, the people in the household, the foster family.

I was allowed to visit with my grandmother and a few of my relatives from time to time, but primarily at my grandmother's house was when I saw anybody within my tribe.

Now, of course, as I got older, I found out that there were other families. I was a young child then. I didn't realize this. But, as I got older, I realized there were other members of my tribe that were interested in having me or members or some of my brothers and sisters reside with them. However, because of their large families and their inadequate housing conditions, the local welfare office would not allow us to live with them.

MR. SCHWARTZ. By whose standards was it determined that these were inadequate conditions for you?

MS. ELOFSON. The State of Washington, the department—I think it was public assistance then, called the department of public assistance, was their standards. They set the standards. I'm not sure, but I think they take some of their guidelines from the Federal standards.

MR. SCHWARTZ. Was it by agreement with the rest of your family or relatives that you could have conceivably be placed with—that it would be better for you to be placed elsewhere in a non-Indian home? Are you aware of that?

MS. ELOFSON. No. There are at least three families right now that I know of that had wanted some of my family, including myself, to live with them as a young child.

MR. SCHWARTZ. Would you go on in time? Then what happened?

MS. ELOFSON. Well, then I was lucky, because when I was 15 years old, or 16, I think, I moved in with a really nice non-Indian foster home and foster family. They were very encouraging in terms of me spending time with my grandmother and members of my extended family. Particularly my foster mother, Doris Goodman, even, you know, would record and talked with my grandmother and she has tapes and writings of different, you know, unique cultural things that grandmother would share with her.

It was, I think, probably the encouragement of both my grandmother and my foster mother at that time that I did go on to college. She tried to help. Of course, at that time I realized some of the differences, because, you know, I had been raised with non-Indian values, but I guess, you know, the realities are that you still are an Indian. So there are some adjustments that had to be made. My

foster mother was very patient in trying to explain some of those things.

So, I went to college. And then I went to—I started, after the undergraduate program, I started a graduate program, which I haven't yet completed. Then I moved back home afterwards.

MR. SCHWARTZ. When you grew up in the Port Angeles area, did you attend the public school systems there?

MS. ELOFSON. Yes.

MR. SCHWARTZ. Through what grade?

MS. ELOFSON. I graduated—the 12th grade.

MR. SCHWARTZ. The 12th grade. During that time, what exposure in your classes did you have to courses or studies of tribal governments or Indian tribes in the area, anything of that nature?

MS. ELOFSON. Nothing.

MR. SCHWARTZ. Nothing at all in all 12 grades?

MS. ELOFSON. Nothing. I think it was the year after '67, they began to introduce a program, an Indian education program, but there was nothing up until then.

MR. SCHWARTZ. After being raised in this non-Indian environment, could you explain to this Commission how you view your own tribal identity and how that—how and the extent to which that became important enough to you to assume an active role in the governing of your tribe?

MS. ELOFSON. Let me see. Well, I think that part of the reasoning for, I guess, the encouragement for me to go to school, I think, up until the time I graduated, there was less than a half-dozen Indians that had ever graduated from the Port Angeles school district.

My grandmother, when I was very young, I think she was—she was a great influence on me. She had originally felt that the better and more extensive education that I had, the better off that I would be as I got older. I think, originally, she was not as concerned about me coming home until I got probably in the later part of my high school years, when we started talking about all of the problems. For example, she was faced with, you know, a piece of trust property with about 800 heirs to it and never being able to get it subdivided. All these different, various issues and unique problems came up.

She was very much of an encouragement for not only me to go to school but all of the other members of my family. I might add that everybody in my family, except for one, has either gone through college or is in college right now. I think it's largely because of her influence.

MR. SCHWARTZ. Your tribe has approximately how many members living either on the Lower Elwha Reservation or in the immediate area of Port Angeles?

MS. ELOFSON. The enrollment is slightly up—I think about 425. I can't be exact, because we just added some people to the rolls. I'm not sure what the exact number is. About 90 percent of them live in the Port Angeles area.

MR. SCHWARTZ. What forms of jurisdiction or governmental services is the tribe exercising or providing for these people?

MS. ELOFSON. Our programs?

MR. SCHWARTZ. Yes.

MS. ELOFSON. We have a law enforcement program, a small one. Our reservation is approximately—I think it's close to 500 acres right now. We have a day care program that we started from nothing. We invested, I think it was \$700, 2 years ago, and now we have a licensed program. Starting next month, we're going to introduce our language, our tribal language, into that, because that is a good age for kids to start learning our language. We have a group home facility there that services not only our tribe but other tribes in the area, and also we have—we take referrals from urban areas, also.

We have a fish hatchery that was completed about a year ago. We successfully released close to 3 million chum salmon in May.

We are currently building a lovely community center with Federal funding that will be done in February, and we have some senior citizen programs, meals on wheels, you know. We do what we can with the limited amount of money, but we try to do a little bit for everybody with that limited amount of money.

MR. SCHWARTZ. What you are describing is relatively small number of people in a tribe with still an active government role being played by tribal leaders. I'm curious to know, especially since you do live so close to a commercial center, the need that you see for a separate government rather than a government underneath, let's say, a local government or the county government.

MS. ELOFSON. Well, to an extent, our group home program and our social services program, we do coordinate with either county or State agencies in and out of Port Angeles. But it is extremely important to us to have some type of control. Obviously, that is not entirely possible, because our group home and day care have to be licensed by the State, and there are some certain standards they have to meet.

I think, as a whole, we have found over the years that if these programs were totally offered and under the direction of these agencies, they really wouldn't meet our needs. There are certain—they haven't in the past, and I think right now, we are starting to, as we develop ourselves—that they're becoming more responsive to what the needs are of our people.

MR. SCHWARTZ. Thank you, Ms. Elofson.

MS. HOTTOWE, you're the vice chair of the Makah Indian Tribe, which I know is located out on the northwestern tip of the United States, I believe, out on the Olympic Peninsula. I know you do have a larger land area out there than the Lower Elwha Tribe and a greater number of people. How many people are living out on the Makah Reservation, both Indian and non-Indian?

Ms. HOTTOWE. Including both non-Indian and Indian, around 1,400.

Mr. SCHWARTZ. How many of those would be Indians?

Ms. HOTTOWE. Approximately—I'm saying approximately at this point—a little bit over half that number are Makahs or other Indians.

Mr. SCHWARTZ. Could you describe the governmental institutions existing on the Makah Reservation and the services provided by the tribe to the people living on the reservation?

Ms. HOTTOWE. Certainly. The Makah tribal council is indeed the governing body, and mandated by a constitution in 1934 to take care of the needs of the people, the welfare and the well-being, providing education, etc., to all of our membership.

The Makah Tribal Council consists of five; one a chair, one a vice chair, and we have a tribal secretary. We have in the administration an executive director and his office. We have an HEW [health, education, and welfare] department or arm, as we call it, that is funded through various agencies, including ONAP, Office of Native American Programs.

We have a municipal department that takes care of the water treatment plant, which we have had for the past several years, the west end and east end sewer system. This was a part of our 701 plan a few years back, because of the increased need for housing, and in fact, increased development of such project. We're now into our second housing project of 30 some homes. Our first was 45 homes.

We have included within the organization a law enforcement that we contracted. This is our second year under Public Law 93-638, because we found that we needed a comprehensive enforcement program to take care of our needs. These were not being met by other sources. Through 638, we have been able to develop and indeed did amend our code August 1976, which did include jurisdiction over non-Indians or over all peoples on our reservation.

We have a judicial system. We have a probation and parole officer. We have the social services area under which the HEW department supervises an office of child development, including infant and day care and Head Start programs, etc.

But, in the area of jurisdiction, we have had cases where people, of course, have had to come to our court, and the question we posed to the enforcement and to the judicial people was, "Have you had any static, any flak, any people that were disgruntled or disturbed about having to appear in our court?" Realizing that we're a community that does indeed offer all kind of resort complexes to the public. And we do have in the summertime perhaps upwards as many as five, six, seven, or whatever number of non-Indians on the reservation.

Many of these because of some civil action might have had to appear in our court. We have never had anyone that complained about it. We do have an exclusion and expulsion ordinance that is used upon nonmembers. These are offered an opportunity to appear

before the tribal council within a certain period of time for a hearing, so that indeed anyone who is removed for just cause does have an appeal opportunity. Our court system offers all that. It offers the total program. We have never had, at least to the best of my knowledge, anyone on the reservation who has complained about such jurisdiction.

MR. SCHWARTZ. Is there an opportunity for non-Indians living on the reservation to provide input into tribal government decisions?

MS. HOTTOWE. There are people that serve on committees, such as—we call it the RED committee, the resource and economic development committee, and we have non-Indians serving on that committee, and they represent businesses because not all of the businesses on our reservation are Indian.

We also have through the process in the court system whereby non-Indians have the opportunity to serve on juries. We have not had such a trial yet, but perhaps someday we will.

MR. SCHWARTZ. Mr. Doherty, you are a county commissioner for Clallam County, which includes both the reservations of the Lower Elwha and the Makah Indian Tribes within its boundaries. What intergovernmental contact and communication have you had with the ladies seated to your left and right and the government that they represent?

MR. DOHERTY. My testimony only relates to about a year or a year and a half or so that I have been a county commissioner. There have been times in the past when there have been relations in different areas of local government that I'm not aware of and haven't been familiar with, because they haven't arisen during the short period I have been a county commissioner. Presently, we have a number of areas, but they're purely administrative areas really.

We have the usual—I presume, usual—amount of interlocal agreements for small projects—the radio system that provides communications for law enforcement on actually all three of the tribal—on the reservations within our county. They happen to be all within my district. So I'm quite familiar with the members of the tribes, and I try to keep a good relationship or contact, periodically to find out if we can work together on other items. But to date, they have really been rather, I guess, minimal. Friendly, but minimal. There have been some planning areas that we have attempted to get representatives of the three tribes involved far more than they have been in the past. The only ones we have had much success with, that would be the oil port, and we have had contacts from all three tribes that backed the counties' position in opposition to a superport in the Clallam County area. Both of the women here today played a role in that fight, I might say.

MR. SCHWARTZ. Have any formal mechanisms been established in the county to assure tribal input on matters that might concern either of the tribes existing within the county borders?

MR. DOHERTY. No, they haven't. We have started a new system within our county to try to get that kind of mechanism going. We tried to broaden our appointments to some 20 boards and commissions that advise the county commissioners. We publicly advertise all of the vacancies. A couple of times I have sought applicants from the tribes. We have had not much success that way, to be honest. We have sent a couple of letters urging the members of the tribes to participate more in our comprehensive planning efforts and that has been very limited to date.

There have been some contacts recently to cooperate in our park system and recreational planning, principally with the Makahs, which I hope we have some success on, relating to their newest archaeological dig at the Hoko area. We hope to work towards some kind of a joint project there that would create a county park or a State and county park with some kind of security for the Makah dig.

MR. SCHWARTZ. Ms. Hottowe, earlier today, the attorney general, Mr. Gordon, said that—to paraphrase him—that the State treats its Indian and non-Indian citizens alike with respect to the provision of services. I assume he meant in that social services as well as other services that could be provided by the State. Would you agree with that characterization, both for State and for services provided at the county level?

MS. HOTTOWE. No, I would not. Social services has been always a limited area, and I, as councilperson, am not that cognizant of it as Mary Jo Butterfield, who serves on the council with us. But I do know that we have had to initiate many social services from tribal monies, utilizing whatever resources were available to us.

However, at a local level, at the extreme bottom level, practically, have we had some cooperation and coordination for such services. CETA has provided for several working in that area, DSHS on the reservation with the satellite station established there. We initiated that, and so, therefore, those are being provided now.

We would certainly like to work towards a closer cooperation and especially in the juvenile area, which again arises, comes from the jurisdiction thing. And this would be one of the recommendations that we, the Makah Tribe, would like to make in regards to placing of foster children, whereby those children that are placed through DSHS process must go through the superior court. We feel that we have the capability of doing that right there on the reservation, utilizing our court system.

MR. SCHWARTZ. When you say "superior court," you mean that court located in Port Angeles?

MS. HOTTOWE. Yes. DSHS will not pay for the care of that child unless it goes through that system. Those at the local level feel, yes, our court system could be utilized, but that is where it sits at this point.

MR. SCHWARTZ. Are there other social services or planning functions conducted by State or county governments or programs of

assistance provided by them in which you feel that the tribe is not receiving its fair share, based on the fact that the tribal members are also State and Federal citizens?

Ms. HOTTOWE. I think one of the biggest barriers we have is they go by population count. And, therefore, we're a small number of people. This is one of the areas which is in the—with the senior citizen area—that because of our limited population, that we can't get—we aren't an agency unless we were a certain number. So, therefore, they recommended a consortium.

But, if you have been up to the Olympic Peninsula, you know that geographically sometimes this is impossible for us to get together. It is difficult. Down to Quinault, it is a 4-hour drive from where I live. And for the Olympic Peninsula people to get together to form an area agency, I think would be kind of difficult, because some of us don't have the time to participate in that kind of a thing.

MR. SCHWARTZ. I have been out to the Olympic Peninsula, and one of the things I have seen out there is the importance of fishing to the entire population that seems to exist out there and for the large number of visitors that frequent the area of Port Angeles and further out, out towards your reservation and Neah Bay. Could you describe from a tribal viewpoint, both you and Ms. Elofson, the relative importance of fishing to your own tribal economy and to your tribal citizens?

Ms. HOTTOWE. Historically, fishing or any marine life, the search for the whale, the search for the seal, the search for the fish, our economy has been based on it, historically. There came a time then when regulations forbade us to even really participate. So, financially, it was a burden for our people to—well, in fact, get finances to get the huge—to develop a fleet, as it were.

We did this many years ago, and the boys are still paying for their boats now. And with limited time to fish because of regulations, etc., etc., the economy of the Indian people from my tribe is in jeopardy and future development, which we certainly wish to go into, we are having to take a very close look at it for the very reasons that I have stated.

We have been engaged in fishing for, Lord, I can't even say how many years, but when restrictions are placed upon us, then it's extremely difficult for people to want to even venture on into something that historically is our right. And we feel that it is our right. I don't see how anyone could take that right away from us. It is an inherent right.

MR. SCHWARTZ. Ms. Elofson?

Ms. ELOFSON. Yes. I think, historically, our tribe was a very strong fisheries tribe, but I think that there was a time, probably because of our close proximity to Port Angeles, that many of our tribal members didn't fish, or if they did fish, they were considered poaching, and they were constantly being harassed by State game officials until after Boldt came down with his ruling in 1974. Since

then, I think it is real evident that our fisheries fleet—there has been an increase in gear and that kind of—those exact figures and statistics could be provided for you if you wanted them.

But, right now, I think it has made a lot of difference, that the ability for our people to fish makes a lot of difference. Our unemployment rate, I think, is over 50 percent in terms of our tribal population. As I mentioned earlier, people, up until I graduated, there was only a half-dozen people that had graduated from school, so there were many people that have absolutely no skills at all. They only—in terms of work around there, you know, most of it is related to the logging industry and that is on shaky ground most of the time, because they're always being shut down.

I think fisheries is the only natural resource that our tribe can develop because of the size of our reservation; we have no forest, we have no coal or oil wells on our reservation. So, in terms of establishing an economic base, I think that is the long-term plan that we have with our hatchery.

MR. SCHWARTZ. With respect to the fisheries issues—and I know both the tribes, both the Makah and Lower Elwha Tribes—are within the case area for the Boldt decision—have either of you noticed any changes in community relationships between the tribal members of your respective tribes and the citizens of Port Angeles or Clallam County since the determination by Judge Boldt that tribal members in your area do, in fact, have rights to a certain number or amount of the fish passing through that area? Ms. Eloffson?

MS. ELOFFSON. There has been a lot of—at least, how I felt when I went to school—that people, anyone who had problems relating to Indians, it was more of a covert type of a prejudice, I think.

I believe that—since then, I had a younger—two younger brothers who lived with me when I moved home 3 years ago, and they were in high school. In listening to them and watching some of the other children in the Port Angeles area, the whole relationship to Indians and the prejudices, I think, that are felt towards the Indians are certainly a lot more overt now. The students sit and talk about the Boldt ruling and talk about, “Those damn Indians” in the classroom.

You can see the effect, I think, all over the place.

MR. SCHWARTZ. Ms. Hottowe, would you agree with that assessment?

MS. HOTTOWE. Yes, I would. I think the sad part of it is just what Patty stated, that it does reach the young children. We went to a football game in Clallam Bay. Clallam Bay is 20 miles away. Most of our business is done off the reservation, so we have lots of sales tax money that we feel that we provide the State of Washington, but we're not demanding anything in that area. I'm just mentioning that. But, when our young people walk into a store and young people say, “Oh, here come the Indians. They should be out there setting their nets.” Perhaps those Indian children don't know what a net is.

Now, this is the typical attitude of many young people. I find it disgraceful, because we're very proud, a very proud people, and I see no shame in being an Indian. I don't see any shame in my children being an Indian or my grandchildren. I'm very proud of them. Certainly, they're raised to be very proud of who they are and what they stand for. But to be treated that way is just ridiculous. I just don't understand it.

We are 72 miles away from Port Angeles and 50 miles away from Forks. Yet, those communities have become unfriendly. I don't say all people are, but those that are, are as Patty stated. They're not overt. They're out in the open with their remarks and attitude, and it is something that is kind of difficult to define; but you sure feel it and smell it, and it doesn't smell good.

When a girl of ours was Makah Day Queen for the year of '76, and she said to the gal that was elected or won the prize for the coming year—and to all Indian people, our young people are our future, and we admire them and respect them, just as they admire and respect their elders—and so one of the girls, the girl that was outgoing said to the incoming, "Well," she said, "I really feel sorry for you. You're going to be called Pocahontas now." You know—why? I just don't understand it.

MR. SCHWARTZ. Thank you, Ms. Hottowe. I thank all of you. I have no further questions at this time, Mr. Chairman.

CHAIRMAN FLEMMING. Mr. Doherty, you have listened to the testimony that has just been given. Are there plans within the county structure to attempt to deal with these tensions that have been identified growing out of a court ruling in a positive and constructive manner?

MR. DOHERTY. I suspect you understand that the root of the problem is above our jurisdiction.

CHAIRMAN FLEMMING. Yes.

MR. DOHERTY. Most of the fundamentals are involved with solving the problems that seem to be above our jurisdiction, as far as the specifics.

I think generally there is an attitude among those on the board of commissioners now that we would like to do what we can to encourage better relations. Our county is sort of unique in a couple of ways. One, as they mentioned the geographics of the thing, we are a long, narrow county, and problems at times tend to isolate themselves, but the current board has tried to go out and deal with every section of the county physically that we can. We hold meetings in different areas and try to recognize community needs case to case throughout the county. I think we will continue that, and, hopefully, this next coming year all three tribes would see us and be more active as far as being available to talk to their tribal councils and see if there are mutual areas where we can work together.

Our county is a home-rule charter county, and it's the second home-rule county in this State. And that in itself meant that the

people in Clallam County recognized the need for more self-determination in our county. I think we should carry that a step further and recognize that with the tribes within our jurisdiction. Hopefully, in the next year when we get done with the implementation of the basic charter for our county government, we will carry that on out to the different communities, including the reservations.

CHAIRMAN FLEMMING. Do you now have or are there plans for having regular meetings with the tribal councils?

MR. DOHERTY. We don't know—we have talked about it. We just haven't done it on a regular basis at all. I attempted to have one or two persons within each council that I keep in contact with and try to assist them when I can within the areas that we have some mutual concerns.

For instance, well, right now, we're dealing with the potential of setting up a detoxification center. We have talked to representatives from the three tribes about their participation in a detoxification center, through our community alcoholism treatment program.

Parks is another area. Older Americans Act funding, I try to keep a contact on each reservation, so if they have grants, I can assist them as a member of the board of directors for the six-county group. So, it has been rather informal. I think we have made far more attempts than have been made in the past.

CHAIRMAN FLEMMING. Are you a part of an area agency on aging that covers six counties that you indicate?

MR. DOHERTY. Yes.

CHAIRMAN FLEMMING. You represent your county on that?

MR. DOHERTY. Yes.

CHAIRMAN FLEMMING. And were applications for assistance made from your county to the area agency, do you ask to be included in the area agency budget?

MR. DOHERTY. Commissioners that sit on the board of directors get recommendations from an advisory group of three persons from each of the counties. We make the final determination, and, as with most boards, we watch over our counties' projects. I try to make a special emphasis for those tribal projects.

CHAIRMAN FLEMMING. Are there representatives of the tribes on the advisory committees?

MR. DOHERTY. On the advisory committee, yes, but not on the board of directors that makes the final determination. It consists of two commissioners from each county.

CHAIRMAN FLEMMING. So if one of the tribal governments wants to obtain some funds, let's say, for a nutrition program under Title VII of the Older Americans Act or wants to obtain funds for some other type of service under Title III, then they would make their application directly to the area agency or would it take place through you as a member of the board for the area?

MR. DOHERTY. It goes through the staff of the area agency and then to the advisory board and then the board of directors. I

appreciate it, though, when the members of the different communities and nonprofit groups that are making applications from our area keep me informed as to what they're doing, so I can make sure the staff is handling it as expeditiously as possible.

CHAIRMAN FLEMMING. Ms. Hottowe?

Ms. HOTTOWE. Yes. We do participate in the Title VII nutrition area. Title III, I'm not cognizant of. But one of the questions we have is, you have so many agencies then that you do have to go through. And, again and again, it gets back to where we would prefer to deal with one funding agency. Direct funding would make it so much simpler, because of the paperwork and for the amount of services per paperwork, I think the paperwork outweighs it.

But the other complaint that we did have with the nutrition program was recognizing or not recognizing the different eating habits of people. Native Americans eat differently, and we have even subsidized our nutrition program to allow for fish because fish is a staple food to us. It isn't cheap by any means either. So this is how we participate in that.

CHAIRMAN FLEMMING. Do you have a congregate meal program involving your tribe?

Ms. HOTTOWE. I am sorry. I didn't hear that.

CHAIRMAN FLEMMING. Do you have a program where people can obtain meals at a given site 5 days a week?

Ms. HOTTOWE. Yes. We did use referendum 29 monies and do now have a new senior citizens building and a nutrition program, plus other activities that generate from that center, but, again and again, I say we would like to prepare our own menus. It is that simple.

CHAIRMAN FLEMMING. You have been unable to get authority to do that? Where does the food come from?

Ms. HOTTOWE. It comes through the county, just as Mike said.

CHAIRMAN FLEMMING. Does the county contract with a firm for furnishing the meals?

Mr. DOHERTY. I'm not sure of that, Mr. Chairman. I think the Community Action Council.

Ms. HOTTOWE. [Interposing] The senior citizens program, through the HEW—

Mr. DOHERTY. I think the Community Action Council is the prime contractor, and they have programs in various spots throughout the county, the three cities, and I know they do it on the Quileute Reservation, also.

CHAIRMAN FLEMMING. Do you have a program, Ms. Elofson?

Ms. ELOFSON. Yes.

CHAIRMAN FLEMMING. Have you had difficulties on the maintenance side, also?

Ms. ELOFSON. No.

CHAIRMAN FLEMMING. Personally, you know there has been an effort made and continues to be made to make it possible for those

funds to come directly to the tribes in the same way that CETA funds come directly to the tribes.

What is the relationship between the county commissioners and the school system within the county?

MR. DOHERTY. I think Washington has gradually separated the county-level government from the school system. Years ago, it used to be tied in much more directly. I know in our county years ago, the superintendent of schools used to be the chairman of the park board or something and all kinds of interrelationships. Over the years, Washington law has changed. So it is an independent taxing authority now. We handle their books, and that is about it. We handle their wants, and that is about all.

CHAIRMAN FLEMMING. Do any of you know whether any conscious effort is being made to introduce into the curriculum of the public schools materials that would give children and young people a better understanding of the American Indian community or tribal government and so on? Is there any effort being made along that line at the present time?

MS. ELOFSON. In Port Angeles, they have had an Indian education program since, I think, '67. Several years ago, they introduced some specific Indian history and zeroed in primarily on the northwest area, some historical and cultural programs. Now, it is my understanding that the school district is—we just lost a superintendent who I thought was pretty good in Port Angeles. He is gone now, but he was only around a couple of years. He, I believe, had worked closely with the Indian program to incorporate that into part of the regular curriculum rather than relying on Federal funds to carry the program out. But primarily they rely on the Federal bucks.

I suppose if the Federal dollars weren't there, there wouldn't be teachers' aides, and there wouldn't be Klallam language classes except for maybe this one they have incorporated into the program.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Ms. Elofson and Ms. Hottowe, I have been listening to the statements that were made concerning the differences—for example, Pocahontas, and the statement concerning the Indian classes. It seems to me that the need is for all of the student body to become aware of the total history. What I would like to know, is there in the classes to which you have referred, is this course available to all of the students, Indian and non-Indian?

MS. ELOFSON. Yes, it is.

COMMISSIONER FREEMAN. To what extent do the non-Indians participate in all of the classes?

MS. ELOFSON. I think—it is my understanding that about half of the class, each semester—I think it is a semester course. This one in particular is made up of non-Indian children.

There is another separate program where—I forget what her title is—but a woman has a slide show presentation, different things that

are very unique to Klallam people, and she has it geared for both the elementary level and the secondary level. She does do little spot shows, you know, little presentations for an hour or two throughout the school district.

COMMISSIONER FREEMAN. Now does this include—to what extent does that include the parents of the children, the parents of the Indian and the parents of the non-Indian children? The community-education concept is what I'm getting at.

Ms. ELOFSON. It doesn't. This is a program—this is an Indian education program. The program is approved by members of an Indian parents advisory committee to the school district, and, to my understanding, non-Indian parents are not involved at all.

COMMISSIONER FREEMAN. What about the faculty?

Ms. ELOFSON. There is normally one or two faculty that are assigned to work with that committee to help implement the program.

COMMISSIONER FREEMAN. Mr. Doherty, when you were referring to the problems, you were saying that many of the problems are outside of the jurisdiction, and the three of you here are in a sense within the same jurisdiction, and in fact your area includes both tribes. Is that correct? So that what I would like to have you comment on is the concept of, when people say, "Where do we begin?" You would say, "Begin where you are at."

Now, what programs could the three of you initiate for to begin the total community—to bring about the change in the attitudes which is disturbing you? What do you see that you could do now that would help not only your communities but other communities, and, if necessary, don't limit your answer to whether you have funds or not, because if this is a program that ought to be federally funded, then maybe this Commission could be of some assistance in recommending it.

MR. DOHERTY. We have some similar areas, for instance, in economics and natural resources in our area, principally timber and fishing, so those groups could possibly work together if there were some kind of consortium that could be formed between business outside the reservation and people on the reservation that would have a similar economic interest and if they worked together it would help them economically. Maybe that would be an area to get them together.

A couple minutes ago, I mentioned to Edie that I think part of the community understanding of Indian culture in our immediate area, hopefully it would be solved, but there will be a bit of inroad in there when the Makahs finish their million dollar museum in that area, and our younger people start to understand that the Indians were out on our end of the peninsula 2,500 years ago, and we have only been around 70 or 80 years. I think by loaning some of the artifacts that they have picked up at Ozette and now at the Hoko, possibly.

that will make an inroad. If there is a program there for cultural schooling, that might help.

The park service in our area has initiated a bit of that with their visitor center in Port Angeles for the Olympic National Park. I know they have classes for young children who go out and watch the carving and basket-making at times. That may be a start and that is coming in the next few months.

COMMISSIONER FREEMAN. Let me ask you another—you have television?

MR. DOHERTY. We have got a very limited local communications system. We have no television that—no station that produces out of our area. We have very limited radio coverage because of geographical barriers.

COMMISSIONER FREEMAN. So when you turn a television on, what do you get?

MR. DOHERTY. Seattle or Canada or Whatcom County.

COMMISSIONER FREEMAN. Seattle is where we are now, is it not?

MR. DOHERTY. True.

COMMISSIONER FREEMAN. If you could come here for this hearing, perhaps we could also catch some of the people here and help them with their programming. Would that be something of help?

MR. DOHERTY. It is difficult because the bulk of their audience for advertising and everything, news items, is urban oriented. They're not up on the frontier where we are.

COMMISSIONER FREEMAN. What I'm getting at is trying to answer the problem which you have said, which has been described here in that there are people, a large number of people, who do not understand the basic issues. It is my opinion that telecommunications educates or miseducates more people than any other institution. If that is the case, then perhaps the programs which you are describing might be suggested to some of the media, and they would project them on the radio and television on a continuing basis, and what would your reaction be as to the value of such?

MS. ELOFSON. I think that—a clear example is—I was not a member of the council yet, but we requested county assistance support of a flood plain program about a year and a half ago—I guess it was a year, from April—Mike, you were recently on the commission or something like that—but we held a public hearing, or the commissioners held a public hearing over it in a room probably half this size, with maybe as many people. Fortunately, the local papers covered it in a very mellow way, but there was all kinds of sports fishermen and people there.

We were talking about just asking the county to help endorse—we had made a request to the government at the appropriation hearings to help build us a levee and buy the land around the levee area, because we get flooded. Obviously, under the drought conditions, we weren't this last year, but we will get flooded two or three times a

winter. It is a condition that has existed forever. The commissioners, I believe—I think the end result was that it was tabled.

You asked me to bring a document.

MR. SCHWARTZ. Yes. As a matter of fact, if you would just describe it, we would enter it into the record.

MS. ELOFSON. Well, I think the basic context of this whole document was a proposition that the tribal attorney, at that time, made to the county asking to set up a means of communications and cooperation in terms of environmental planning in all types of areas. Of course, at that time, it was just prior to appropriations hearings. We were wanting their endorsement of the consolidation and flood control plan that we had submitted to Congress. Congressional people were very apprehensive of buying land for any Indian tribe because of all of the issues in the way that the climate was as far as Indians were concerned. That was one of the reasons that we were denied our request.

COMMISSIONER FREEMAN. So that you do not have access to the communications industry?

MS. ELOFSON. We did. We were lucky that time, I think, because the reporter that was there covering it. There was a lot of angry people in the room, and in my opinion, at least—and I don't know how Mike felt about it, but the particular reporter that covered it did—he covered it in more mellow terms than the hearing actually was. At least, that is how I felt. But communication is definitely a problem. [To Doherty] Was it tabled?

MR. DOHERTY. Yes, but I don't know if that is the best example to talk about typical county relations. Our county is very cautious in getting anywhere near flood plain projects. We have been burned a couple of times, as most counties have. If you do something with any section of the river, it can be held against you, if somewhere down the river you changed the course. We have been very leery of getting involved in anything to do with flood plains.

MS. ELOFSON. But it's a problem that exists there for our tribe, and I don't think we ought to sit and act like it's all rosy, because it isn't.

MR. DOHERTY. We said at that time, if the tribe wants to get involved in the flood plan, the tribe can do it. There was a lack of understanding as to what the agreement would entail. There was a problem with the county maintaining the dike. Would there be a contract? Would it be upon call? Would we have to maintain it?

Because of a lack of understanding a couple of times in the past where the county has had problems on a couple of sections of the Dungeness River and Bogachiel River, I think the commissioners decided it was easier to let the tribe handle the dike if they wanted it.

COMMISSIONER FREEMAN. The county didn't want to get involved?

MR. DOHERTY. True.

MS. HOTTOWE. I wonder if I can answer something that is of concern to our tribe?

CHAIRMAN FLEMMING. Yes.

Ms. HOTTOWE. It is in regard to the shorelines management act. Because of our geographic location, one border is the Pacific Ocean on one side of our reservation on the west, and to the north, the Strait of Juan de Fuca.

President Carter, I understand, has signed a bill stating that—I know all three of us sitting here are going to be concerned about this—there is not going to be a supertanker port east of Port Angeles, but neither does it say anything about the west of Port Angeles. And that is the concern that I have.

We have not been involved in any portion of the planning of the shorelines management act. We do intend to, and our planner did attend a meeting in regard to funding that was made available to develop a shoreline inventory. I know that the Lummis were in attendance there. I know that they have a certain concern.

The concern at this point is the money available for such a plan. The amount is \$100,000 that has been allocated to Indian tribes in a four-State area. Three of those States are in the Great Lakes region. The hundred thousand dollars, we feel, the Makah tribe will go after. My understanding is so will the Lummis. I think it's merely to prove a point that the the initial go-round of any money made available to our coastline management and by Federal law—I understand we were not eligible to have any input into it anyway—but the money that came to the county—I am sorry—to the State of Washington was a considerable amount. I don't know if Mike is knowledgeable about how much that money was. A million some.

MR. DOHERTY. We have a problem in our area getting involved at all in the Coastal Management Act. We felt there was a policy addendum to the State's act, saying that the oil port—if there should be a superport on the West Coast, it would be out west of Port Angeles. We thought by taking CZM [coastal zone management] money, we would be stuck, having ratified that policy agreement, so we have tried to stay away from their money. There is a substantial amount of money available to counties.

Ms. HOTTOWE. But not to tribes. As I say, we're a tribe that two sides of our reservation are on the water, and a very vital point now, because if supertankers are indeed to enter the Strait of Juan de Fuca, we feel—and we, the Makah people, feel we already have a very fragile ecosystem that does indeed eventually provide food for fish. That is what the big concern is in this area at this time is the fisheries resource. So I think it is something that we're going to have to work together, not only at the local level but at the Federal level, also.

I know that the tribes can get together very easily, very quickly. If we have a problem, we know who to contact right now, but getting through maybe even to Mike sometimes is kind of difficult. You know, our network is beautiful. They call it the moccasin telegraph.

It's a system that is just unbeatable, but sometimes trying to get to the officials is really difficult.

MR. DOHERTY. Mr. Chairman, I didn't mean substantial money is available this year. Next year there is far more. This year actually the county is hurting also for the amount of money available for coastal planning.

Also, just to correct your schedule, Patty might clarify that the name of your tribe—

MS. ELOFSON. The Lower Elwha band of the Klallam Tribe.

MR. DOHERTY. There are three bands within the Klallam Tribe and Patty is from one of those bands.

CHAIRMAN FLEMMING. Thank you very, very much. We appreciate your being here.

Counsel will call the next witnesses.

MR. BACA. Dennis Peterson, Betty Nesbit, Doug Fuhs, and Terry Unger. Would you please stand up so you can be sworn.

[Messrs. Peterson, Fuhs, and Unger and Ms. Nesbit were sworn.]

DENNIS PETERSON, SUPERINTENDENT OF SCHOOLS, FERNDALE SCHOOL DISTRICT; DOUG FUHS, PRESIDENT, LUMMI PROPERTY OWNERS ASSOCIATION; BETTY NESBIT, COMMISSIONER, WHATCOM COUNTY SEWER DISTRICT NUMBER 2; AND TERRY UNGER, COMMISSIONER, WHATCOM COUNTY

CHAIRMAN FLEMMING. Nice to have you with us.

MR. BACA. Would you each please state your names, addresses, and occupations for the record. Start with Mr. Peterson.

MR. PETERSON. I'm Dennis Peterson, superintendent of schools, Ferndale School District, which is located between Bellingham and Canadian border. It's Box 698, Ferndale.

MR. FUHS. Doug Fuhs, president, Lummi Property Owners Association. I'm an electrician. My address is 2119 Lummi Shore Road, Bellingham, Washington.

MS. NESBIT. Betty Nesbit, commissioner, Whatcom County Sewer District Number 2 in Bellingham, Washington.

MR. UNGER. Terry Unger, Whatcom County commissioner, 311 Grand Avenue, Bellingham.

MR. BACA. Is it Mr. Fuhs?

MR. FUHS. Mr. Fuhs.

MR. BACA. Mr. Fuhs, would you briefly describe to us the purpose and the goals of the Lummi Property Owners Association?

MR. FUHS. We're primarily concerned with the jurisdictional problem. The Indians, I think if you talk to just about any Indian, they will state that they have sovereign rights and complete jurisdiction on the reservation. And at the same time, you will have county governments, State governments, and Federal Governments, as a matter of fact, taking issue with that point of view. And we as property owners, within the external boundaries of the reservation,

are kind of confused as to who does have jurisdiction on the reservation. And I think the main problem is, as an example right now, I think that our sheriff's department is confused as to who has jurisdiction on the reservation.

I know that the State has problems with who has jurisdiction over water rights on the reservation in that the reservation does have, in fact, water districts on it, and the State has granted permits for these districts. And yet the tribal council has taken issue with these permits and has, in fact, written letters stating that you are going to function just as long as we feel that we want you to function.

And once again, I don't know who is right, and I don't know whose wrong, but we would like the issue cleared up. I think that this is primarily what our problem is.

We have heard here testimony, I did, in essence saying that there was no problems, that these people were working together amicably. That is fine. That is commendable. These are individuals and personalities working together. What happens, heaven forbid that somebody get voted out of office under these circumstances, and differences of personality exist?

What is your point of reference as far as law is concerned? You have essentially here government of men and not of laws. Do they refer ultimately to the treaty, which I'm sure would be the Indian point of view, or do they refer to the Constitution, which I'm sure would be the non-Indians' point of view or reference point. I think this is the issue we have, sir.

MR. BACA. Let me clarify a few things. One was that you stated that the goal of the organization is basically clarification. Isn't it really more than that? You don't want the issue particularly clarified in a way that you don't agree with, which is to give the tribes jurisdiction over all persons within their external boundaries?

MR. FUHS. I'd say this, that should that happen it would be better than the existing circumstances.

MR. BACA. That is to have clarification even if it were clarified in that way?

MR. FUHS. We're concerned essentially with—of course we're all citizens of the United States. We would like to have the Constitution ultimately—ideally, we would like to have the Constitution of the United States apply to all citizens of the United States on an equal basis. That would be our ideal situation. If we could have that, we would be very happy. And we do not feel that that exists today.

MR. BACA. Let me understand that. In what way is that missing from the Lummi Reservation?

MR. FUHS. Well, let's say I have a problem, that I call sheriff's department, as an example. The sheriff, depending on what the circumstances might be, would tell me that is not his jurisdiction.

MR. BACA. Perhaps you didn't understand me, sir. I think you explained your problems with the overlapping jurisdictions, the

sometime confusion. What I'm asking you is, in what way do you believe that the Constitution is being violated on the reservation?

MR. FUHS. I will give you an example of this happening.

An individual was brought to the Lummi court, tribal court. He did not have counsel. The question was raised as to why he did not have counsel, why the Lummi court did not provide him with counsel.

The attorney for the Lummi Tribe simply stated that the Lummi court did not fall within the jurisdiction of the Constitution of the United States with respect to providing counsel for an indigent person and justified this position in that the Lummi court and its officers are not that well versed in law, so therefore, it is not necessary to provide counsel under those circumstances. I have a copy of the newspaper item quoting the attorney, which I can provide for you.

MR. BACA. Could you give me some other examples?

MR. FUHS. Well, going back to the water situation, I think that is a constitutional issue. Who has the right to decide if I can draw water on my land on the reservation on fee-patent land? I get a permit from the State telling them with that permit that I have the right to water. The tribal council takes the position I have the right to that water just as long as they will permit me to have the right to it. I think that is a constitutional issue.

MR. BACA. Ms. Nesbit, you are a board member with Sewer District Number 2, is that correct?

MS. NESBIT. Yes.

MR. BACA. The non-Indians living on the reservation have an alternative to the Lummi Indian sewer proposal, is that correct, also?

MS. NESBIT. We formed a sewer district in 1975, under the laws of the State and the constitution and a duly constituted district.

MR. BACA. Could you explain—as I understand it, there are now two sewer systems operating side by side? Am I mistaken in that?

MS. NESBIT. There is none operating at the present time. We have a sewer district which comprises probably the more heavily populated area along where the white persons live. The Indian sewer system plans to take in the entire reservation.

COMMISSIONER FREEMAN. Will you speak into the microphone.

MS. NESBIT. I am sorry.

Their district will comprise the entire reservation. They are not a sewer district organized as we are. It is merely one that they have. They're not under the laws of the State or the county and would not operate that way, which is what we are required to do. We're elected—our commissioners. We levy the same as any other district.

MR. BACA. Have there been any efforts to try to come up with one mutually useful sewer system?

MS. NESBIT. We have endeavored to cooperate in every way possible. The very fact that the Lummi Tribe absolutely refuses to recognize Whatcom County Sewer District Number 2, in our opinion,

there is just no way, because if we're not recognized, how can we even begin to cooperate? If they refuse to recognize us as a duly-organized district?

MR. BACA. How was it that they refused to recognize it?

MS. NESBIT. They state that they will not recognize Whatcom County Sewer District as an entity or as a body, whatever you want to call it; they just say that they don't recognize it.

MR. BACA. Do they explain that in any way?

MS. NESBIT. Well, they seem to tend to recognize the various entities that maybe benefit. There is a fire district in our area, which has had no trouble, but we seem to encounter the problem with the sewer district. And our request in the beginning was merely to control the billing, the piping within our own district and pump through a meter to their disposal plant, which is done very often in interlocking sewer districts.

MR. BACA. Mr. Unger, has the county or have you individually taken any position on the sewer proposals?

MR. UNGER. Yes. We have been involved in it. As a matter of fact, the sewer district is formed under the auspices of the county according to State law, so we have been involved.

We have granted franchises to both the tribal council on county roads as well as the sewer district on county roads. We have also been involved with the grant-funding process because we have had some concerns with it. But as far as the meetings between the sewer districts and the tribal council, we have not.

MR. BACA. Mr. Unger, in an interview with a member of our staff, you said, I think, that the government should—and I think I'm quoting you—bite the bullet and move to place Indian peoples in the United States on the same status with other citizens. Could you explain that, please?

MR. UNGER. Yes. I think one of the problems that we have run into on the Lummi Reservation—it's become painfully apparent—is the fact that the Federal Government had started a trend of allowing people to move onto reservations, buy property, and assume that they would have full and legal rights as any other resident of any other part of Whatcom County. As a matter of fact, up to 2 years ago, people were still residing on the reservation and assuming that fact, that they had full rights and authorities as any other person and all of a sudden, it's beginning to dawn on these people that there are differences, and there are clear-cut instances where this is not true, that their concern they're expressing to me is the confusion, the one-man, one-vote concept in the democratic process doesn't apply on a reservation. It doesn't apply to them now. They're finding themselves or fearing that they're coming under a rule of government that they're not allowed to enter into. They're not allowed to enter into tribal government. They're not allowed to enter into a sewer system and govern the operations of the policy of that sewer system.

They are not allowed to enter into the policy decisions as far as to how the water shall be used or the zoning, the tribal zoning.

But the Federal Government allowed them in there. The Federal Government set the trend. And now, the Federal Government has either got to reverse the trend and back those people off from the reservation, buy them out and return the reservation and separate, which I feel is not viable. It's my personal conviction that somehow the integration has got to take place, over a period of—a long period of time—I wouldn't state at all that it should happen in 5 years or 10 years, that gradually, the reservations themselves, in the governmental entity there, is to be done away with.

I do not advocate destroying the culture or anything like that. I think their culture is something they feel is very important. I have no intent that their culture should be tampered with, but the governmental function is just totally unworkable, especially with counties.

MR. BACA. Let me understand something. From what you said, apparently there was some policy of the Federal Government that either encouraged or permitted people to move onto the reservation?

MR. UNGER. Right.

MR. BACA. What policy was that?

MR. UNGER. This allowed the sale of property to non-Indians. In the Lummi situation, far better than 50 percent of that property is—I don't know at the present time—but at one time, was owned by non-Indians. As a matter of fact, it approached 60 to 70 percent, I'm told. Those people that represents subdivisions, housing developments, and so forth, of people who bought, not having the slightest idea that they were moving onto an Indian reservation when they actually bought, as late as 3 or 4 years ago.

MR. BACA. There was no disclosure to the purchasing party that the property that they were buying was on an Indian reservation and subject to that jurisdiction?

MR. UNGER. The county isn't required to make that disclosure. Up until the tribes, or the Lummi Tribe chose to make that issue or clarify that issue, it wasn't an issue.

MR. BACA. That is the other thing I wanted you to help us understand. That is, is there some recent activity by the Lummi Tribe that has brought this issue into the fore or—did the Lummi Tribe permit the Federal Government to bring people onto the reservation without opposition? How did that all happen?

MR. UNGER. Well now, that is a little before my time. That was even before I was born. I'm not totally cognizant of how fee-patent land was first allowed by the Federal Government. I'm sure that you probably are more familiar with that than I am.

MR. BACA. I can assure you I'm not.

One other thing I wanted to ask you, because I want to make sure I understand it. That is that what you are suggesting, and that is that the concept of the tribal property be done away with, would require

the United States to abrogate a number of treaties that it has signed with individual tribes across the country. Is it your position that that should be done?

MR. UNGER. That those treaties—right, that they be negotiated away to the various tribes, mainly for jurisdictional purposes to clarify jurisdictional issues. I have no particular problem in most of the areas. For instance, another illustration, if I may insert it—fire districts, cemetery districts, and water districts, which are junior taxing districts of Whatcom County, are all funded and operate on a system, a property tax system. The problem is that all Indian-owned lands or tribal lands or trust lands are not subject to property taxes. Therefore, our whole governmental structure at the lower level breaks down when it comes to trying to operate on a reservation. It simply doesn't function anymore and it makes it very difficult. We presently have a fire district—its taxing base looks like a checkerboard, because it can only tax those non-Indians. It could not tax the Indians. Yet it must serve everybody. Just out of philosophical principle, it has to serve every household within that jurisdiction.

The same thing happens with a water or cemetery district or county library system. It works the same way. The county road system works the same way. The county road system serves everybody, yet it can only tax those non-Indians.

MR. BACA. One further point, and Mr. Fuhs, perhaps you or Ms. Nesbit—Ms. Nesbit, are you also a member of the Lummi Property Owners Association?

MS. NESBIT. Yes.

MR. BACA. Could one of you give the Commission some information about the dispute with the tribes over the use of beaches on the reservation? Could either of you—Mr. Fuhs?

MR. FUHS. Well, there is—that is something that has come to pass here of late as well. I don't know if it is really an issue with respect to individuals or it's two different groups flexing their muscles. I think that is probably more the point there. The county got into a little hassle with the Indians over beach rights.

Maybe Terry might be the one to elaborate a little bit on that. I think that the individual problems on the beaches might be kind of an offshoot or byproduct of that issue.

Personally, I have never had any problem on the beach. I go down there when I like to, but there are signs up down there in certain places. People I know of have had problems down there. I don't know—maybe it's because of the thing with the park.

MR. BACA. Mr. Unger, could you help us?

MR. UNGER. Okay. There are two separate issues. One, the tribal council has never—I believe they're not allowed—to sell or abrogate their ownership of the beach. They have sold—non-Indians do have fee-patent title to upland properties but not to the beaches themselves. This again—some of this property was sold with some misunderstandings as to what the ownership was of the beach. The

county does not contest that. The county did get into a conflict situation with the tribal council over access to an island which the county acquired for approximately a million dollars or approaching that figure for park purposes. The county was then not able to resolve the conflict with the tribe over the use of a tideland split to get access to the island. And that is presently—it's been in litigation, and it will probably continue to be. It's not resolved. I'm not sure I can comment much further than that.

MR. BACA. Okay. I appreciate that.

Just one more if we could, Mr. Unger. I'd like to ask you about the conflict between the county and the tribe over zoning on the reservation.

MR. UNGER. Okay. There again I think it's the same type of thing. The county's attitude has been that we have no jurisdiction over tribal lands or over Indian-owned lands. We have specifically exempted all Indian lands and have only zoned, in a very general manner, those lands on the reservation owned by non-Indians. And this creates a very crazyquilt-type approach; but the planning staff and the planning commission, when it held its hearings, found that it got little or no cooperation from the tribal council at the time that the zoning was going on. Since that time, the tribal council has adopted a zoning ordinance, which purports to cover the whole reservation and they're in conflict.

MR. BACA. Is that also in litigation?

MR. UNGER. No.

MR. BACA. No further questions at this time.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Mr. Unger, in reference to your statement that the non-Indians who bought the land on the Lummi Reservation did not know that they were buying land on the reservation, I would like to ask you, are you saying that there is nothing in the legal description in the deed which you have which describes the land as being on the Lummi Reservation?

MR. UNGER. I don't personally have any of those deeds at hand. They may. I'm not aware of it. I don't know.

COMMISSIONER FREEMAN. You stated that you believed that the treaty should be abrogated, that you were willing for the Indians to retain their culture, but not their land?

MR. UNGER. Can I respond to that?

COMMISSIONER FREEMAN. Yes, sir.

MR. UNGER. When we say "not their land," I'm talking about the non-Indian properties within the reservation as to whose jurisdiction they would reside under. That is why the abrogation of the reservation itself, not the land, the tribal land, trust land, I have—that would stay with the tribal council or who ever wanted to own it.

COMMISSIONER FREEMAN. Do you have any information that in the treaty, if it would be determined that the provisions of the treaty would include certain rights to the tribe over the entire area that is

called the Lummi Reservation, would you accept the consequences of that decision?

MR. UNGER. I think that is the basis of the conflict today, is that county government has felt that it has been charged with service to these people, especially the non-Indians; because of the taxing structure, it's the county's assumption that they're to serve with roads and general services that are normally provided for by property taxes. The county has attempted to do that, and it's run crosswise.

COMMISSIONER FREEMAN. By the county government, however, you're talking about officials who are all non-Indian?

MR. UNGER. Yes. They're all elected officials.

COMMISSIONER FREEMAN. All white?

MR. UNGER. Yes.

COMMISSIONER FREEMAN. Are there any persons who have indicated in the past any understanding of the treaty or any recognition of the treaty?

MR. UNGER. We have attorneys that have worked on the treaty to a great extent for the county—studied the treaty if that is what you are—in view of the fact that we're in litigation over certain tribal matters or Indian—

COMMISSIONER FREEMAN. Then your attorneys have advised the county that there is a treaty in effect?

MR. UNGER. Oh, yes. The county is fully aware of that.

COMMISSIONER FREEMAN. So that the county has been advised by its attorneys of the provisions of the treaty?

MR. UNGER. Yes.

COMMISSIONER FREEMAN. But what you are suggesting is that the treaty should be abrogated?

MR. UNGER. I'm suggesting that the Federal Government has created an untenable situation, and I'm suggesting that it appears, as one of the lower echelon of elected officials, that to clarify that situation at this time, can, one, be done through the courts, through a system of conflict, individual conflict, which appears to settle nothing and creates more—a greater degree of animosity, as the Boldt decision has done—or, two, can be negotiated on certain occasions, and three, in others, simply by Federal legislation, resolve the matter and change the structure of government.

COMMISSIONER FREEMAN. Well, is there possibly not another option that the Federal Government could give all of it back to the Indians?

MR. UNGER. That is certainly an option. And it would solve the problem of the elected officials. I wouldn't have to serve—

COMMISSIONER FREEMAN. That would mean then that all of the land that is in all of the reservations would then go back to the Indians and all of the non-Indians would be divested of their land, instead of the Indians being divested of their land?

MR. UNGER. I think there are quite truthfully many non-Indians who would purport that if the government would buy them out at their value, they would be glad to leave the reservation at this point.

COMMISSIONER FREEMAN. At the same price that the Government paid the Indians?

MR. UNGER. I'm not sure about that.

COMMISSIONER FREEMAN. Thank you.

CHAIRMAN FLEMMING. I would like to pursue a couple of these matters further, but first of all I'd like to ask Mr. Peterson just what the relationship is between the Ferndale School District and the tribe.

MR. PETERSON. Present relationship between the tribe—I'd like to think we have a good relationship with the Lummi Tribe. We have a number of problems that we're working on, but, basically, I think we have a good relationship.

CHAIRMAN FLEMMING. How do you work on those problems? What kind of a system has been set up for dealing with issues that arise between the school district and the tribe?

MR. PETERSON. May I go back just a little bit to give you some background on that?

CHAIRMAN FLEMMING. Sure.

MR. PETERSON. I became superintendent about 14 months ago. About 3 months prior to that, there was a disciplinary incident, a kicking incident, where a teacher kicked an Indian child.

The reports of that vary from it being a shove to—a shove with a foot to a hard kick. But that, together with a couple of other things, opened, I would say, the floodgates for a number of frustrations felt by the Lummi people relative to the education the youngsters were getting. Another thing that happened at that same time was that the aides, the Indian aides were asked to join the classified union, and—

CHAIRMAN FLEMMING. Could I ask you to define Indian aides?

MR. PETERSON. Yes. We have several compensatory education, Indian education programs, and the classified personnel were asked to join the union, the PSE Union, the Public School Employees Union.

CHAIRMAN FLEMMING. By classified, you mean supporting personnel to the faculty—clerical and so on?

MR. PETERSON. Yes. One Indian aide did not want to join. That resulted in the school district asking the attorney general's office for an opinion, and the school district was apprised that the Johnson-O'Malley contract did not override the employee's union contract, and thus, when the individual did not join, she was fired.

All right, those two things, as I say, caused a great deal of conflict. As a result of that, the Lummi Business Council presented the school district with a list of demands—or goals would perhaps be a better word—and in these range from firing—

CHAIRMAN FLEMMING. The business council is the same as the tribal council? That is the name of it?

MR. PETERSON. Right. Those goals ranged from asking the school district to fire two or three teachers, who were thought to be prejudiced toward Indian children, to a desire for better curriculum, inservice for teachers relative to Indian culture, etc. During the summer, the Community Relations Service of the Department of Justice came onto the scene, and assisted the tribal representatives and school district representatives to work towards a solution.

As a result, a task group was formed and began to function toward the end of summer and ran into around September and October, and they identified—they clarified the goals and developed procedures to accomplish those goals.

This is a long way around getting to your question, but at the present time we have a joint task group that is focusing in on those goals. And they range from affirmative action, hiring more Native Americans, to better curriculum, etc.

That, I think, is progressing very well. We have had some problems this year getting together. There have been some internal problems in the tribe itself, and both the tribe and we face the same problem of time. It seems every time we turn around we're fighting—

CHAIRMAN FLEMMING. Can you give a little feel of the membership of that joint task force, on both sides, not total membership, just the feel of it?

MR. PETERSON. The initial task force is comprised of—from the Ferndale School District, one board member, one community representative, a principal, two teachers, and myself. It varied.

CHAIRMAN FLEMMING. Were any of the members representing the school district also members of the American Indian community?

MR. PETERSON. No. The Lummi Tribe was represented by five or six members, and the group, I think, functioned very well together. I think that is a positive thing. We have one other problem, however, and that has to do with the Johnson-O'Malley program, and I don't know whether you want me to elaborate on that or not.

CHAIRMAN FLEMMING. Just before you do that, what is the situation as far as your faculty is concerned? How many members of the American Indian community are members of your faculty?

MR. PETERSON. Let's take certificated staff first. Last year there was one Native American teacher. This year we hired three additional. Now we have four. We have eight classified people, paraprofessionals, and one—

CHAIRMAN FLEMMING. Eight out of how many?

MR. PETERSON. That would be 8 out of about 115.

CHAIRMAN FLEMMING. And of the four faculty members, that is four out of how many?

MR. PETERSON. It would be 4 out of about 180 altogether. It's about 4 percent Native American, maybe slightly less than that; certificated staff, around 2 percent.

CHAIRMAN FLEMMING. Do you have any other representatives of minority groups on either your faculty or your staff?

MR. PETERSON. I am sorry I can't answer that offhand. We don't have any black teachers that I can think of. I believe we have some Asian Americans.

CHAIRMAN FLEMMING. Could you just supply that for the record?

MR. PETERSON. Surely.

CHAIRMAN FLEMMING. I would appreciate it. Go ahead. I will be very glad to have you discuss the Johnson-O'Malley issue, with the tribe—

MR. PETERSON. All right. When the task group that I had described previously met, we agreed that Johnson-O'Malley was such a big problem all its own, we would set that aside and work on that independently so as not to jeopardize movement on the other goals.

The Lummi Tribe expressed a desire to contract directly from the BIA for Johnson-O'Malley funds rather than from the State, rather than having the Johnson-O'Malley money go from State to the school district. And, with regard to that, they presented us with a contract in November.

CHAIRMAN FLEMMING. "They" is—

MR. PETERSON. The representatives of the Lummi Tribe.

CHAIRMAN FLEMMING. Okay.

MR. PETERSON. We referred that to our legal counsel. He alerted us to several problems with that contract. From that time on, we, through the year—

CHAIRMAN FLEMMING. I'd like to back up a moment. The tribe presented you with a proposed contract. At that particular point, were the Johnson-O'Malley funds coming through the State to the school district?

MR. PETERSON. Yes. I have to back up a little bit. When the aide was fired, the school district was informed by the office of superintendent of public instruction that the remaining \$6,000 payment would be withheld because the Johnson-O'Malley contract had been broken in that the parent advisory committee had not approved of the firing. Deliberations went on for some time over that, and finally the money was released, and it was—I would say it was agreed that there was not a breach of the contract. From that point on, we had no Johnson-O'Malley program. We had none during the 1976-77 school year. As we were deliberating—

CHAIRMAN FLEMMING. What had you been getting up to that time, the order of magnitude, the amount of money?

MR. PETERSON. Approximately \$30,000 to \$32,000. So deliberation took place all during this past year. In June we gave a contract, a proposed contract, to the Lummi representatives to examine. This was part of this ongoing negotiation. We're still awaiting a reply to that. We're getting some communication on it, but the problem is still not resolved. If a tribe can go directly to the BIA, they can

receive more money. We're looking for some way to have them then subcontract with the school district.

The basic problem arises over, I guess you would say, perhaps jurisdiction over curriculum and the hiring of personnel. In the past, the Johnson-O'Malley program provided that, with regard to hiring, the school district must select from a list that is given it by the parent advisory committee. In addition, there was mutual agreement on the program. There is a grievance procedure if you can't make it. The school district had always had, I think, a good relationship with the Johnson-O'Malley parent advisory committee. Some good things were done.

CHAIRMAN FLEMMING. Does the school district oppose the idea of the money coming directly from BIA to the district for this purpose?

MR. PETERSON. No. The problem comes in defining—I'd say if you have a conflict over curriculum, where does the ultimate responsibility lie? In the school district? That is one of the basic problems.

CHAIRMAN FLEMMING. That you haven't resolved yet? You haven't got a meeting of minds on that yet?

MR. PETERSON. Not yet.

CHAIRMAN FLEMMING. Going back to the task force and going back to some of the demands or requests that were made by the tribe, have you made any progress in the direction of complying with their request relative to curriculum, introducing into the curriculum materials that would acquaint all students in the school district with the Indian community and with the tribal government and so on?

MR. PETERSON. We just had 1 year to get started on that. There was to be a task group evaluation session in April. And that meeting did not happen. There were certain internal problems in the tribe at the time. And we simply have not been able to get that evaluation session together. So I can't tell you all of the things that have been accomplished, but in terms of hiring of personnel, I have indicated three additions to the staff this year.

We did an analysis of achievement test scores for the first time identifying where the Indian students scored in relation to the white students because we want to do a better job in that regard. We know we have many problems. The Indian students have lower achievement scores. They have a higher dropout rate. There is a lack of attendance and some social segregation, and those kinds of problems we want to address and work together to improve.

CHAIRMAN FLEMMING. But in addition to working on opening up improved opportunities for the Indian children, have any steps been taken in the direction of making it possible for non-Indian children to develop a better appreciation of the cultural heritage of the Indian community, of tribal government, and so on?

MR. PETERSON. It's our intent this year to get all of our new teachers over to the reservation, hopefully to meet with the tribal chairman and other representatives. A month or so ago, I wrote a letter to Mr. Cagey suggesting that we work together to arrange a

meaningful session for all of our new teachers, and we will do this every year. That is one step. Western Washington State College is now sponsoring a course on this topic, and some of our people are involved in that.

CHAIRMAN FLEMMING. Some of your older teachers?

MR. PETERSON. Yes. This is an area where we simply have not developed the strategies yet. We're going to. We're going to.

I would like to—excuse me—

CHAIRMAN FLEMMING. I was going to ask you, as superintendent, do you feel that if that strategy is developed, implemented in an effective way that it could contribute to maybe a lessening of some of the tensions that exist in the community between Indians and non-Indians? I'm not just thinking of children and young people now, but I'm thinking of their parents.

MR. PETERSON. Yes, I think it can help. But, as you imply, it's a very—it's a problem that has very broad ramifications. Yes, I think that it can help.

CHAIRMAN FLEMMING. You had another point you wanted to make.

MR. PETERSON. I was going to mention that in the curriculum itself we have three courses at the high school; one on northwest Indians, one on United States history, an Indian view, and another on Indian literature. We're taking greater pains in our social studies units to make sure that the contributions of Native Americans are included.

We're trying very hard with regard to the Indian education, compensatory education programs, to increase their scope, to increase the funding, and URRD is a good example—Urban Rural Racial Disadvantaged—where this last year we managed to approximately double the amount of money going into that program. That serves Indian children only.

We have earmarked some ESEA [Elementary and Secondary Education Act] Title IV(b) money, a very small amount, this year for the first time to purchase curriculum materials in northwest Indian culture. And, of course, we have the Title IV(a) program, that is Indian education, Title IV(a), and we serve many Indian students in our Title I program and Follow Through programs as well. So we're doing a good many things, but we have a long way to go.

CHAIRMAN FLEMMING. Mr. Unger, if I could go back to the question of persons purchasing property on an Indian reservation without knowing that the property they purchased was a part of an Indian reservation, would it be fair to say that if that happened some lawyer or some title company did a pretty poor job of searching title prior to the transfer of that property?

MR. UNGER. No. They can receive title insurance and everything that normally is given out. The case in point is a housing project that was several years old and has some apartment houses in connection with it, and the people—

CHAIRMAN FLEMMING. What I'm getting at is, as I understand it or understood the earlier testimony, a fair number of persons who are non-Indians, who own property that is a part of the Indian reservation.

MR. UNGER. Right.

CHAIRMAN FLEMMING. As I understand that testimony, the people who bought it, bought it not knowing that they were buying land that was a part of an Indian reservation.

MR. UNGER. Some of them—most of them knew, but there were some who didn't.

CHAIRMAN FLEMMING. Then let's take those who knew. Is it fair to say that either they or the persons who were advising them did not have an understanding of the treaties that are involved and of the implications of those treaties?

MR. UNGER. Quite clearly. They had no understanding of—their assumption at that time—the tribal council, 10 years ago, when some of these subdivisions were done, land subdivisions were done, or 15 years ago the tribal council was not active in the area of jurisdiction. The sheriff's department patrolled it. Everybody assumed that the sheriff's department had full jurisdiction, except over Indians. And that they come back to me, and they assumed that the county has full jurisdiction over the non-Indian individual on his land on the reservation.

CHAIRMAN FLEMMING. Is it fair to say that if the school system of 15 or 20 years ago had included in its curriculum material dealing with the treaties, dealing with the implications of those treaties, possible implications of those treaties, that possibly people would not have bought, not knowing what the implications were of buying property that is a part of an Indian reservation? It seems to me somewhere along the line some persons had fallen down in not really looking into the treaties, to the implications of the treaties, and then basing some public policy decisions on the understanding that the treaties did exist and do exist and that there are implications connected with the fact that those treaties exist.

MR. UNGER. All right, I think, Mr. Chairman, the problem developed in that the tribal council at that time did not exert itself, and the assumption was that the trend was away from the reservation or away from reservation jurisdiction, and those people have been going merrily along on their way for many years, a great number of years, and that there was no apparent conflict in that the county had asserted its jurisdiction, that the county was in full authority on the reservation in most areas, and it has not become apparent until a great deal of litigation and a great deal of conflict has developed in the last 4 or 5 years that that was not the case, that the tribal council at that time accepted a lot of this type of jurisdiction, which they will not accept or don't accept today.

CHAIRMAN FLEMMING. Has there been any effort on the part of landowners that bought land on the Indian reservation without

knowing all of the implications, have there been any efforts on their part to sit down with the tribal council to see what kind of understandings might be arrived at? Are you aware of any formal or informal negotiations of that kind?

MR. UNGER. Most of those meetings have been in a conflict situation. Most of them have been emotionally charged. They result due to disputes over jurisdiction of a sewer position, jurisdiction of a law-enforcement problem, or something. Unfortunately there have been no meetings of, let's sit down and talk about general ownership or how we will resolve that. That has not been done, quite truthfully.

CHAIRMAN FLEMMING. Do you think that that might be worthwhile trying?

MR. UNGER. It would be worth pursuing, I would agree with you, because quite frankly, I'm sure that I could say 97 or 98 percent of all of the problems that we have are not racially, absolutely not racially oriented. They're jurisdictional oriented, and they pick up racial overtones after the conflict has developed, but the conflict itself is one of jurisdictional problems and not a racial issue. It would be well if we could get that kind of rapport started.

CHAIRMAN FLEMMING. I know that the Community Relations Service of the Department of Justice came into the picture about a year ago and within the past few months in connection with the school situation. Is that correct? Incidentally, Mr. Counsel, I would like to have us communicate with the Community Relations Service of the Department of Justice and ask them for a report on the situation as they have evaluated it, so that we could just round out the record there.

Well, I appreciate your reaction to my last question.

It seems to me that, if the path is traveled to abrogate treaties instead of to lessen tension, from all that I have been hearing today up to the present time that that would certainly heighten those tensions for some time to come.

I noticed that your feeling was that this should be done not immediately but over a period of 10, 15, or 20 years. I think that that would produce kind of a festering-sore type of situation. I would hope that some effort would be made to sit down and talk without having an immediate crisis being the subject of the conversation.

Any further questions?

COMMISSIONER FREEMAN. No.

CHAIRMAN FLEMMING. Anything further?

MR. BACA. No questions.

CHAIRMAN FLEMMING. Thank you all very much.

MR. UNGER. If I may, I would like to enter one document into the record. It's called "Local Public Works, Capital Development Investment Act." It represents one of the governmental conflicts that developed between the tribal council and the county, and it might shed some light on that, if I may.

CHAIRMAN FLEMMING. We appreciate your offering it and without objection we will enter it into record at this particular point.

Thank you very, very much. We appreciate your help.

Counsel will call the next witnesses.

MR. WALKER. Would the following persons please come up to the witness stand: Jean Hammis, Juanda Boyles, Lillian Phare, George Adams, and Dan Raas.

CHAIRMAN FLEMMING. I ask the witnesses, please stand and raise your right hands, and I will administer the oath.

[Mr. Adams, Ms. Boyles, Ms. Hammis, Ms. Phare and Mr. Raas were sworn.]

TESTIMONY OF JUANDA BOYLES, FORMER TEACHER; JEAN HAMMIS, OUTREACH WORKER, FERNDALE SENIOR CENTER; LILIAN PHARE, STUDENT, FERNDALE HIGH SCHOOL; GEORGE ADAMS, TEACHER AND ADMINISTRATOR OF EDUCATIONAL PROGRAMS FOR THE LUMMI TRIBE; AND DAN RAAS, RESERVATION ATTORNEY, LUMMI INDIAN TRIBE

MR. WALKER. The first question that I would like to ask is to Jean Hammis and, also, to Juanda Boyles.

CHAIRMAN FLEMMING. Ask each witness to identify themselves.

MR. WALKER. Before I ask the first question, would each of you please state your name, address, and occupation for the record.

MS. HAMMIS. I'm Jean Hammis. I'm an outreach worker for the Ferndale Senior Center, a part-time worker, and my address is 2640 MacKenzie Road, Bellingham, Washington. And this is on the Lummi Indian Reservation.

MS. BOYLES. I'm Juanda Boyles. I'm at 3447 Ruth Street, Gooseberry Point on the Lummi Reservation. I'm a former teacher, and at the present time I'm semiretired.

MS. PHARE. I'm Lillian Phare, 4331 Lummi Shore Road, Ferndale, Washington. I'm a student at Ferndale High School from the Lummi Reservation.

MR. ADAMS. George Adams, 2977 Smokehouse Road. I'm a certified teacher, and I am also the administrator of educational programs for the Lummi Tribes.

MR. RAAS. I'm Dan Raas, reservation attorney for the Lummi Indian Tribe. My office is at 2616 Pointer Road, Bellingham, Washington, in the tribal offices.

MR. WALKER. Ms. Hammis and Ms. Boyles, in an interview with staff, you indicated that each of you recently formed an organization called the "Citizens for Social Responsibility." Could you each tell us a little bit about why you joined that organization and what its purposes are?

MS. HAMMIS. Well, I was interested in the sewer problem, shall we say the duplicate sewer problem; one presented by the Lummi tribe, and the other presented by the non-Indian property owners. I

was not satisfied with the information that we had and wanted to find out more in as an objective manner as possible.

Ms. BOYLES. I have similar reasons for helping to form the Council for Social Responsibility, the rationale and purpose being formally to affirm and promote, defend human and civil rights and responsibilities in seeking justice, to develop and enhance the worthy cultural, socioeconomic, and political values within a matrix of the technotronic-societal environment.

I would point out the Civil Rights Act of '68, updated from '64, constitutional amendment 14, sections 1, 2, 3, and 4.

MR. WALKER. One of the concerns expressed by the president of the Lummi Property Owners Association was the tribal government cannot be responsive to their concerns, because the tribal government is undemocratic and amounts to taxation without representation. Would you please comment on that?

Ms. BOYLES. I find that the Lummi Point Store, that the Indians who trade there seem to be paying sales tax, a regressive tax, certainly, the same as I am. I understand that Indians living off the reservation or owning property off reservation have always paid property tax. Those working and earning enough money certainly do pay income tax to the Federal Government on products they buy—tires, gasoline, and so forth—of course they're paying taxes. I don't find this tax ruse or dodge, whatever it is, to be really valid, when discriminating against Indians.

This sewer project, I do feel, is discriminatory in that a petition was recently circulated about September calling for a separate sewer. I'm not familiar with separate sewer systems, except that they probably cost more than to putting the whole thing together in a reservation sewer, including everyone. The cost of the Lummi sewer, as I have explored cost factors, seems to amount to about one-tenth of the cost projected recently in the middle of August at a property owners' meeting, a homeowners' meeting in the fire hall at Gooseberry Point.

MR. WALKER. In the last panel, we heard some of the concerns of non-Indians who live on the Lummi Reservation. You have indicated in interviews before that you feel that they have certain stereotypes about Indians that don't fit reality. Could you comment on that?

Ms. BOYLES. One hears these tales, Indians are lazy, of course, everyone knows they don't know how to fish, that that they're too lazy, and they lie around in their boats drinking and so forth. They let their children run loose, and they're dirty and they're uneducated. It's just a stereotype that one hears. Having been brought up a mile from the same Indian reservation, of course, I learned to negate these kinds of things many years ago. I pay no attention to them whatsoever. I went to school with on- and off-reservation children of Indian descent and approached the thing from a different frame of reference entirely.

MR. WALKER. Ms. Hammis?

Ms. HAMMIS. Well, I—

MR. WALKER. Ms. Hammis, do you have any views concerning the quality of law enforcement services provided by the Lummi tribal government?

Ms. HAMMIS. Well, I did have a prepared statement, and it does involve—yes, it involves some of my understandings at the time I moved onto the reservation concerning law enforcement. I can go into just my personal experience; is that what you want?

MR. WALKER. Would you do that, please.

Ms. HAMMIS. Well, at the time of our move onto the Lummi Reservation, I was certainly definitely aware that this was an Indian reservation, that I was, I felt, that I was somewhat of an alien moving onto Indian land. I had been raised, like Mrs. Boyles, not too far from the Lummi Indian Reservation, and was aware through my education—as I remember in the eighth grade, we had Washington State history. We had United States history off and on through our schooling. We always knew about Indian treaties. I cannot understand people not knowing about it. I cannot understand people in Whatcom County not knowing that was an Indian reservation.

I was under the impression that the Indian tribes were sovereign nations and that if I would move onto a reservation, it would be like a Canadian, perhaps—I envisioned it this way—Canadian moving into Whatcom County to our resort area, Birch Bay. They can't vote, but they do pay taxes. I assumed that I would be in the same situation.

I also said to myself, if—I was thinking of Harry Truman's old saying—if it is too hot in the kitchen, get out, and I was ready to move in with those ideas. If I didn't like it, then that was my problem.

I have had some problems with livestock loose, not all of it owned by Indians. My worst problem was something owned by a non-Indian, and I did call the police to see if they could remove it. They couldn't find it, you know—roosters and cows wandering around.

My contact with the police, I felt, has been very amicable.

Now I'd like to read this prepared statement I have.

My husband, William Hammis, and I attended our first meeting of Lummi Property Owners Association in the late fall or early winter of 1976. We assumed it would be a meeting concerned with discussion of possible physical improvements to the community, such as cleanup of roadsides or new equipment for the fire department. Topics covered involved the Caucasians' or non-Indians' complaints against possible Indian control of several aspects of their lives.

Specific topics as I remember, were the following: A consensus of agreement on desiring Whatcom County control over non-Indian-owned real estate and access and usage of adjacent beaches and tidelands; two, a consensus agreement on desiring police protection and law enforcement by Whatcom County Sheriff's Office, not Lummi Indian police; three, expressed resentment over a statement

accepted as fact that Lummi on the reservation weren't paying real estate or other taxes, yet were receiving Federal grants; fourth, a report was given that Mr. Wallie Armstrong, now deceased, was representing the Lummi Property Owners Association at meeting in Salt Lake City. Other non-Indian or white property owners from various reservations were said to be at this meeting in Salt Lake City. It was reported they hoped to form a national pressure group to secure legislation dissolving Indian responsibility in the area of zoning, law and order over said property owners.

At the conclusion of the meeting, I told my husband I thought that this was a racist and bigoted organization and that we would have nothing to do with it. I also said that I was shocked and humiliated at what I interpreted as blatantly racist slurs spoken freely by various people in attendance. My husband agreed with me on both of my angry comments. It was either at this meeting or later, I do not remember, that my husband and I heard about the two opposing sewer proposals. We went to Vernon Lane, then tribal chairman, and asked for a description of Lummi sewer plans.

When he finished, my husband said to Mr. Lane, "We can't lose on the Lummi plan. You can count on our support of your plan."

And I concurred with him. And then I think that further testimony here will bear out the meeting this fall and explanation by Mrs. Nesbit of the other sewer system, and involved in that was—I understood that we were to have been charged \$2,000, approximately, for each person for a hookup. Now I would like to mention—

MR. WALKER. Ms. Hammis, if you have more written testimony we could have you submit that for the record, but we have a short time. I would like to ask a few more questions.

MS. HAMMIS. All right.

MR. WALKER. Have you met since that time with the Lummi Property Owners Association, and do you see any possibility of working together in a manner which we have heard testified to this morning as it's going on in Yakima?

MS. HAMMIS. Let Ms. Boyles answer that.

MS. BOYLES. Yes, I would be glad to answer to that.

In forming this council, we had hoped to ameliorate the situation. I have a clipping here from the *Bellingham Herald*, September 30, in which we proposed an open house at my home, quotation, "We would like to reconcile both groups," I said. "We want to get at the facts. We feel no one's civil rights should be negated."

That was set for October 1. The meeting proceeded October 1. Anyone was welcome to come to it. There was a full house. And I believe it was climaxed by a letter read from Senator Magnuson, and those present seem to subscribe to the fact that the Federal Government was aware of this problem, and the Federal Government was going to help get this thing settled.

I believe you can get a copy of that letter from Senator Magnuson through someone by the name of Leonard Nichols. I would be glad to submit this all as evidence.

MR. WALKER. Thank you.

Mr. Adams, we have heard testimony from the last panel, Dennis Peterson in particular, that there has been an ongoing dispute over Johnson-O'Malley funds within the Ferndale School District. Can you briefly give us a history of that and tell us where you intend to go from here?

MR. ADAMS. I would be glad to.

Mr. Chairman, Commissioner Freeman, audience, I'd like to respond to that question by this: There is definitely a struggle between Ferndale School District and the members of the Lummi Tribe, i.e., the Johnson-O'Malley program.

As Dr. Peterson pointed out, the occurrences that he has stated are correct, that there are two issues that prompted the Lummi people to pull the Johnson-O'Malley program out of control of the Ferndale School District. One was due to this particular kicking incident that one teacher was—that one teacher exerted on one, I believe it was a sixth-grade—a middle-grade— student. And, of course the other PSE conflict, where the PSE more or less put our Indian aides or Indian specialists at parity with their classified—of course, our contention is that they're of separate category. This is where we ran into problems, forcing one aide to join the union and subsequently not joining it.

MR. WALKER. What in your view right now is the cause for no Johnson-O'Malley funds being in the Ferndale School District? What is the basic problem?

MR. ADAMS. Well the basic problem right now is we haven't been able to sit down and really actually get down to negotiating. Of course, Mr. Peterson was correct in saying that there were some internal problems in the tribe that hampered some of these activities, these proceedings, but all in all, the major drawback is that Ferndale contends that it cannot have, quote, "Lummi employees in their school district without being employees of the district." Of course, we know, in fact that many other districts have loaned employees in their school districts.

We know that districts contract with various agencies, and we see no reason why Ferndale School District does not enter into a contract under those provisions, you know, having tribal control yet contracting services to the school district. In other words, the dominating control would lie in the hands of the Lummi people, which is under the 638, Public Law 93-638.

MR. WALKER. Mr. Rass, I believe you have a document which summarizes some of the dispute that has gone on between the Ferndale School District and the Lummi Tribe over JOM funds. I wonder if you could present that for the record and clarify anything which you feel has not been made clear at this point.

MR. RAAS. That is a broad order on that, but yes—

COMMISSIONER FREEMAN. Would you speak into the microphone.

MR. RAAS. I have a document we have prepared at the request of the staff which contains relevant drafts of agreements and position papers that both Dr. Peterson and Mr. Adams have been speaking of. It also contains three loose newsclippings describing the general Johnson-O'Malley and discrimination conflicts and a number of appendices to the Tribal Indian Education Act, Title IV(b) of, I believe, IV(c) application, which are statistics comparing the Indian achievements in the Ferndale School and the non-Indian achievements. With your permission, Mr. Chairman, I would offer this as an exhibit for the record.

CHAIRMAN FLEMMING. Without objection, I will be very happy to accept it as an exhibit and enter it into the record at this point.

MR. WALKER. Mr. Raas, are there any provisions in the Indian Self-Determination Act which are relevant to this dispute over JOM than funds in the Ferndale School District? And, if so, would you please explain?

MR. RAAS. Yes, The Indian Self-Determination Act, the entire title is the Self-Determination and Educational Assistance Act, Public Law 93-638, now codified at 25 United States Code, section 450. It contains a complete section which overhauls the Johnson-O'Malley program. And it provides in that section, as far as is relevant here, that Indian tribes and Indian-controlled schools may contract Johnson-O'Malley funds directly from the Bureau of Indian Affairs rather than, as is the current practice, going through the local school districts and hence through the State of Washington, for Washington and otherwise other States.

The Lummi Indian Tribe has made such a contract. It now contracts directly with the Bureau to receive Johnson-O'Malley funds.

The difficulty and the glaring lack in that provision or in that title of the act is that there is no provision then to put the tribal Johnson-O'Malley program back into the school district. And that is precisely the problem that the Lummi Tribe faces now. The Lummi Tribe has a Johnson-O'Malley program. It's run out of the tribal educational center, but absent an agreement between the local education agency, the Ferndale School District, and the Lummi Tribe, Johnson-O'Malley employees and, hence, the Johnson-O'Malley program is not inside the school district where I believe the tribal education people feel that it would do the most good.

MR. WALKER. Thank you.

MS. PHARE, you are a junior at Ferndale High School, and I talked to you about a week ago about some of the problems that you have experienced in the Ferndale School District, as you have gone through that school district. Would you tell this audience and the Commission some of the problems that you feel exist in the Ferndale School District with regard to Lummi students?

Ms. PHARE. Well, one of the things that comes to mind is prejudice of the teachers toward the Indian students. I feel that prejudice between students is something that the students, that the Indian students could handle, but when there is required classes that you have to take and that the only teachers that offer it are prejudiced teachers, it makes it hard for any student who wants to graduate, to finish, or get the kind of grade out of it that they know they can get. I have gone through this. My hopes are to go on to college. At Ferndale, it seems very difficult just to get through high school. It gets very depressing up there.

We have had teachers commenting in grade school—one of my younger sisters came home and was all worried. She said that her teacher—I think she is in third or fourth grade—told her—she asked the class if anybody knew where Indians came from. No one knew. So she told them they were made up of old clam shells that the white people had thrown into the water. It's just things like this, that has brought, not only in high school and junior highs, but even in the elementary schools.

MR. WALKER. Since Judge Boldt's ruling in 1974, has there been any change in the school district in terms of Lummi students?

Ms. PHARE. Well, I think most of the change—this is only my opinion—is in the students' attitude. The attitude of the faculty, of the teachers, has always been there as far as I can remember, and my parents—it seems to exist more with the older teachers, and you know, like the ones that my grandparents have had troubles with are the same ones that my parents are having troubles with today.

MR. WALKER. What kinds of courses are offered to students in the Ferndale School District regarding the Lummi culture, itself, or Indian culture as a whole?

Ms. PHARE. There are two that were brought out as from the Lummi, based kind of mainly on the Lummi people—northwest Indians—is offered. Then they have got a substitute. There is a United States history 1, 2, and 3, and United States history 2 is the Indian point of view; that is, the history of the Indian people. The Indian students can take that as a requirement or the white people can. It's elective for whites, non-Indians.

MR. WALKER. Without identifying anybody by name, would you describe to us some of the kinds of incidents which cause you to believe that teachers in the Ferndale School District are insensitive to the students? You have a sister that was subjected to some kind of discipline. Could you tell us about that?

Ms. PHARE. It's been brought out a couple times now about the kicking incident. This was with my younger sister. And they said that, as Mr. Peterson said, that it's debatable whether it was a slight shove with the foot or whether it was actually a kick.

I feel there is some room for debate here. If it was a slight shove, there is—she almost fell to the ground. If it was a slight shove, this wouldn't have happened.

It was printed in newspapers where he apologized, and he never did. And the quote from Mr. Boyd was when there was a conference between my mother and Gail and the teacher, that the teacher didn't want to see her again. He told the principal just to keep her out of his way, that he didn't want to see her again.

MR. WALKER. Thank you. I have no further questions.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Mr. Adams, with respect to the incidents that have been described, I would like to ask if you know whether the formal reports concerning the school district have been made to any Federal agency?

MR. ADAMS. On these particular incidents?

COMMISSIONER FREEMAN. Yes.

MR. ADAMS. There were none that I know of, reports—i.e., this kicking incident?

COMMISSIONER FREEMAN. Yes.

Do you know whether the Ferndale School District receives any Federal funds?

MR. ADAMS. Yes. They receive—the question is, do I know what kind of funds they receive?

COMMISSIONER FREEMAN. Yes.

MR. ADAMS. They receive a considerable amount of monies from Public Law 874.

COMMISSIONER FREEMAN. That is administered by what agency? The Department of Health, Education, and Welfare?

MR. ADAMS. Yes. Those monies are monies that are to offset trust lands and Federal lands that are not in the tax base with the local school agencies. It's to compensate for monies that are normally taxed—

COMMISSIONER FREEMAN. That is called the impact program?

MR. ADAMS. That's correct.

COMMISSIONER FREEMAN. What other funds?

MR. ADAMS. There is Title IV, part 8, which is out of the Office of Indian Education, which comes directly from Washington, D.C., to the school district; Title I, which is a reading program, also goes to school districts. There are some State monies—URRD—that has been mentioned before, Washington State monies, Washington—Urban Rural Racially Disadvantaged—monies that go to the school district. And formerly Johnson-O'Malley went to school districts by way of State agency, superintendent of public instruction.

COMMISSIONER FREEMAN. Do you have an opinion as to whether these funds have been administered in accordance with the purposes of the law?

MR. ADAMS. I would have to say that they were not administered in accordance to the purpose of the law. The Lummi have always maintained that education is a treaty right. Again, looking at the treaty, it says that the Federal Government will educate Indians, and that Johnson-O'Malley was designed to do just that. Historical-

ly, Johnson-O'Malley monies were lumped into the general funds of most all school districts throughout the Nation. And they were not earmarked directly to assist Indian populations. They were lumped together, and they were disbursed. They lost their identity. There is no knowledge of their utility.

Recently, though, it changed somewhat. Parents do have some considerable control over the monies, the expenditures, the program development, and the—the question is, does the school district administer funds? I would say they administer funds, but the net result isn't that good.

COMMISSIONER FREEMAN. I would like to ask the attorney with respect to the statements that have been made by the student here concerning the prejudice, the overt acts of prejudice by the teachers, has this matter been brought to your attention as attorney for the tribe?

MR. RAAS. Yes, Madam Commissioner, it has.

We have discussed not only those acts that were mentioned, but a number of other allegations of active and overt prejudicial activity against Indian students. We have discussed this in a context of your last question of Mr. Adams of what can we do in terms of Title I and Title IV and URRD monies.

The decision was made on a provisional basis, on a continuing-review basis, that commencing a lawsuit or threatening litigation or beginning investigations would prove counterproductive to the ongoing negotiations between the tribe and the school district, that we felt that we could probably win such a lawsuit if we brought it, but it would be very time consuming, very expensive, and the net results would be worse than if we negotiated it.

COMMISSIONER FREEMAN. I'm not suggesting a lawsuit. I'm asking whether a complaint of—whether the complaint of these matters has been referred to the Federal funding agency, for perhaps an additional violation with respect to the provisions of Title VI?

MR. RAAS. Not at this time.

COMMISSIONER FREEMAN. May I suggest that you consider it?

MR. RAAS. Yes, ma'am. Thank you very much.

COMMISSIONER FREEMAN. I have no further questions.

CHAIRMAN FLEMMING. We appreciate very, very much your giving us the insights that you have relative to the situation in the community and in the school district. Thank you very much.

Counsel will call the next witnesses.

MR. ALEXANDER. Sam Cagey, Catherine Tally, Bernard Thomas, and Forest Kinley.

[Ms. Tally, and Messrs. Casey, Kinley, and Thomas were sworn.]

TESTIMONY OF CATHERINE TALLY, CETA COORDINATOR, LUMMI INDIAN TRIBE; SAM CAGEY, CHAIRMAN, LUMMI BUSINESS COUNCIL; FOREST KINLEY, DIRECTOR, FISHERIES; AND BERNARD THOMAS, COMMUNICATIONS DIRECTOR, LUMMI INDIAN TRIBAL ENTERPRISES

MR. ALEXANDER. Starting with Mr. Kinley, could you each identify yourself, your name, and any position you might hold with the tribe, for the record.

MR. KINLEY. I'm Forest Kinley of the Lummi Tribe. I'm the director of fisheries, and also a member of the Lummi Business Council.

MR. THOMAS. I'm Bernie Thomas. I'm a Lummi Indian, presently the communications director for Lummi Indian Tribal Enterprises.

MS. TALLY. My name is Catherine Tally. I am a member of the Lummi Indian Tribe, and I'm currently their CETA coordinator.

MR. CAGEY. My name is Sam Cagey. And I'm the present chairman of the Lummi Business Council.

MR. ALEXANDER. Mr. Cagey, I assume that you were here when members of the panel previously testifying, the county commissioner and so on, indicated that there was a feeling that people came onto the Lummi Reservation, non-Indian people, and they were uninformed or misled as to what the powers of the tribe were and are. Would you comment on that?

MR. CAGEY. Yes. I don't know about uninformed, because most of the land sales during the thirties were supervised by the Bureau of Indian Affairs.

Later on, for public assistance some more supervised sales took place in that Indian people had to sell their land allotments in order to be eligible for welfare.

Later on, in the fifties and sixties land developments popped up through people that had accumulated a lot of land and became speculators and were assuring the people that they sold to that they had title insurance to the beaches, and this was a great selling point in our area.

It is hard for me to believe that from a supervised sale and even from people in real estate that they would deliberately give their potential buyers false information, that they were indeed buying Indian property.

MR. ALEXANDER. One of the suggestions made today for solving the conflict situation that seems to exist in the Lummi area was the ultimate abrogation of the government of the Lummi Tribe and their jurisdictional powers, perhaps some retention of trust property ownership. What would your solution be?

MR. CAGEY. I couldn't put it in proper context, Mr. Alexander, but I would hope that if I had the money I would be able to go and buy Slade Gorton's land without his permission and Terry Unger and see how they'd like it.

I believe it's a well-known fact that Indian people place a great responsibility and great reverence for the land, that land is above all

things to them. We're not about to go down and let the last of what we own be abrogated, the treaties and our land.

MR. ALEXANDER. In an earlier panel today, we had testimony from county officials in Yakima, non-Indian mayors of Toppenish, Yakima tribal officials, who also have a checkerboard jurisdictional area—they have a significant non-Indian population living in the reservation area, yet the thrust of the testimony was that all of the governments involved had, with difficulty, but had been able to negotiate and work out working relationships on areas of common interest. In your view, why has that not been possible in Lummi?

MR. CAGEY. Well, the people that are testifying today, and I hope they won't take issue with what I have to say, but I have to say it in order to clarify my position.

When you're dealing with staff people, that is exactly who you're dealing with; when you're dealing with people elected to responsibility, as our tribal councils are, we hold everything above any willful or maybe personal attitude. We have to protect—in Lummi we have to protect 3,000 tribal members and their property and our tribal property. It's not left to staff people to do this. It's the responsibility of the Lummi Business Council to take care of issues of that nature.

MR. ALEXANDER. Have there been overtures from the Lummi Business Council to the other government officials in the area to try to work out any issues and what response, if any, have you received?

MR. CAGEY. Over the years, we have had several meetings with the commissioners and other Federal officials. And one in particular—I guess it was mentioned here—the easement across to Portage Island, and the negotiations would break down for one reason or another.

As far as I'm concerned, that issue has been settled, and the solicitors in Portland have validated the easement across that land. So I guess the next move is up to Terry Unger, if he wants to appeal. But at this point, as far as the Lummi Business Council is concerned, that issue is settled. The easement has been canceled.

Along other lines, we have made open invitations to the people that are testifying here, and who publicly refuse to sit down in a picnic or banquet or just open-meeting forum to sit down and try to get on some mutual ground so that we could coexist within our community. To this point, they have hired people to work against us. And they have done everything contrary to what we hoped would happen, this is to meet with them and try to settle some of the problems that mushroomed to what they're today.

I heard Mr. Fuhs deliberately state to this Commission that he had no respect for our authority or our jurisdiction, when he said, "I go onto that beach anytime I want to." He knows the beaches are closed. I'm not here to please him or his kind. I am here to relate to you, and I hope you will have some kind of answer for us or maybe be a mediator to what our problems are. Maybe they're not that big.

MR. ALEXANDER. Miss Tally, your function has been in the area of CETA and education? Is that correct?

MS. TALLY. Yes. I also function[ed] as the community health representative for the tribe, in '74 and '75.

MR. ALEXANDER. In the area of education, I know we discussed a number of specific programs, but I'm curious as to what in your view, the role the school system plays in the attitudes that people in the community have about Indian tribes and about what their powers, jurisdiction, and legal status are?

MS. TALLY. To comment on what I have heard here today from the county commissioners and school district representatives and also from the tribal representative area, so-called staff people, that there is very little knowledge of Indian sovereignty, the tribal sovereignty and jurisdiction that we have that was granted and we retained for ourselves.

To go back to the Ferndale district issue that was discussed by Dr. Peterson and George Adams and Miss Lillian Phare, the Lummi Indian tribal members, who are parents of the children attending the Ferndale School District, exercised their tribal sovereignty and jurisdiction when they chose to come to the Lummi Indian Business Council to ask for their support by tribal resolution to have a meeting with the Ferndale School District School Board. This was at that time granted to the Lummi parents by tribal resolution, and what Mr. Peterson stated, asking the Ferndale school board to release the schoolteacher that was involved in the child-abuse issue and other teachers that have been prejudiced and very uncooperative with students that were attending the Ferndale school district, not only during that incident, but through past years.

We have from 45 to 50 students entering the first grade; and we have records showing that we have from 5 to 2 students graduating. What happens to those students? Some of these are dropouts, some of them are pushouts, some of them by marriage, some of them by parent removal.

And we would like a thorough investigation done in conjunction with what is happening here today.

I heard the question asked, was a complaint signed with the Civil Rights Commission? There was procedures started, but because of some internal problem that we were having, I was put in charge by the parents to see to it that this complaint was submitted. I was terminated from my position at that time as community health representative. I was being held responsible by the parents at that time.

I hold CHR responsible for what is happening to the children in school. I hold the Lummi Business Council responsible, and the staff, the Johnson-O'Malley staff, the Title IV staff, the URRD staff; they are accountable and should be held responsible for some of the things that are happening there.

The Lummi parents have delegated some authority to the Lummi Indian Business Council, but they have not delegated their treaty rights or their sovereign rights to them. These things cannot be negotiated under any circumstances.

MR. ALEXANDER. Thank you.

MR. THOMAS, you are with LITE. Could you briefly explain to us what that is?

MR. THOMAS. LITE is an acronym for Lummi Indian Tribal Enterprises. It is the business arm of Lummi Indian Business Council. It is comprised primarily of three ventures; first of all, the aquaculture venture, the Lummi Indian Construction Company, and the Lummi Indian Seafood Company. The mission of the three companies or ventures that are operating under auspices of the Lummi Indian Tribal Enterprises is to train Lummis in all areas of management and labor and to operate on a profitable basis and to develop new economic opportunities for the Lummi tribe.

MR. ALEXANDER. How many people are currently employed, approximately?

MR. THOMAS. There are approximately a hundred people employed, but it varies seasonally, depending upon the activities of the different ventures, to as much as 150.

MR. ALEXANDER. Was a venture of this nature, providing employment in the community, greeted by the non-Indian community, business community, or government community as something really terrific or positive or what was the reaction?

MR. THOMAS. Actually, I think there was considerable controversy about it. You have asked some pretty broad-based questions, or a broad-based question related to who all supported the enterprises development and who didn't.

I think, categorically, the local officials did not support the development of the enterprises. I think that more than that, the members of the community—non-Indian members of the community living on the reservation and surrounding area were very much opposed to the development of the economic development of the tribe on the reservation.

MR. ALEXANDER. Mr. Cagey, in your view, could you explain why you think this phenomenon occurred? Generally, when someone puts into a community an enterprise that employs a hundred people who spend money in the community, builds a business base, the general reaction is that such a thing is a positive thing. Why would something like this produce a negative reaction?

MR. CAGEY. Not being God—

MR. ALEXANDER. Not being God.

MR. CAGEY. In 1968 the war on poverty was just going about full bore, and Lummi was coming in about the middle of it and looking for different ways and means to start taking advantage of some of that war-on-poverty money and getting people trained and start thinking about developing something in our area. As with any

community or with any nation, a change in the system or the surroundings brings a lot of worries and concerns. We didn't have that problem too much because we had hardly anything going for us in 1968. But still, when we announced our project, some of the people who are testifying here today took up arms and tried to stop that. They just worked for several years to slow down the Lummi progress.

It cost us, in—it's still costing us hundreds and thousands of dollars to fight off the brushfires that they create. Stemming from the progress we made in the aquaculture project, going-on into the swing offs and into the things like we're trying to develop a sewer system, that is the cause for the formation of Whatcom County Sewer District Number 2.

We laid claim to our water rights on the reservation, so immediately we have a Water District Number 15. And this is the type of thing that has got to a point—I think the real issue for dissension, in attempting to stop Lummi progress, I think they have forgot even the real issue. And everything that Lummi attempts, they're going to fight. That is just the way I see the movement.

MR. ALEXANDER. In your view, what is the real issue?

MR. CAGEY. At this point?

MR. ALEXANDER. At this point.

MR. CAGEY. I don't think I could answer you.

MR. ALEXANDER. Down the road?

MR. CAGEY. Well, the attempt now is to abrogate treaties, but that is a swing-off from stopping Lummi progress and defying Lummi jurisdiction and authority within the exterior boundaries of the Lummi Reservation.

MR. ALEXANDER. Mr. Kinley, your background is in the fisheries area. What impact in your view has the fishing controversy had on relationships in the Lummi-Bellingham area?

MR. KINLEY. First of all, I'd like to give you a little background. I spent about 40 years in this business of trying to get the State of Washington to recognize that Indians do exist, and it's been a long hard struggle, and the first sign of any victory at all or any recognition of Indian people was when Judge Boldt came along with his decision.

We went through 40 years of State court decisions that were never favorable to Indians. I think that you asked Sam what is the problem with our nation or our people in trying to stop the development of Indian people.

When we first started the community action programs, the whole nation was supporting, you know that these poor Indians had no houses, they had not this, and we never had much influence. There was very few of our Indian leaders that ever seen Washington or talked to even the Secretary of Interior or even to the Commissioner of Indian Affairs. It was just in the late years that the Commissioner of Indian Affairs would talk to Indian people.

When the community action program came along and developed Indian people, then they were beginning to worry that we were getting into a power structure and economic base that we would have some influence and some say in what direction we were going. I think this is the big concern of a lot of non-Indians that has moved into Indian reservations and took advantage of the State's welfare program that made, say, 70 percent of our lands taken away from our people through being poor and couldn't be eligible for welfare unless they sold their lands. This was the termination policy.

Also, the Bureau injected, which we still feel was illegal, that Canadian Indians—that were closely related to Canadian Indians and intermarriage and if they inherited land on the Lummi Reservation, it became taxable and was finally sold for taxation. At that time the State of Washington had a law which says that aliens couldn't own land in the State of Washington.

So we feel that—we still feel that the Government will have to get this land back for us that was sold for tax purposes, you know, for Canadian Indians, because if they weren't aliens and could own land, then it was the responsibility of the United States Government to take care of this land that should have stayed in trust. We still feel this.

As far as the Boldt decision and the whole bit—when this was first handed down, the National Marine Fisheries wrote an impact statement on what the Boldt decision did to non-Indians. Senator Magnuson had them recall it.

This is the type of prejudice we have in this State. And I worked very closely with the past director of fisheries and tried my very best. I have spent the last 3-1/2 years or 4 years in court and never hardly at home. I try to work close to them, but every way that you know, that we tried to negotiate, tried to be nice, tried to do everything that was right, but in no way has the State of Washington or National Marine Fisheries really cooperated with us.

Now, they have done some good things this year. Granted, we got more fish in the sockeye international waters this year. But we got jockeyed around to where our best days were taken away from us, too. There was an instance where the commission met at 10:30 and opened the season to the reef netters at 9 o'clock, and we didn't hear about it until noon.

We have purse seine crews. We have guys in town. By the time we get them notified, they have lost their day. This happened not once but three or four times. We had various harassments through other fishermen. We have had white fishermen throw rocks and stuff into our nets, ram boats, and we have had a hearing here in Seattle to—what do you call it—grand jury investigation on this and nothing has happened yet.

The President formed the National Task Force on Fisheries in Washington, D.C., and had a regional task force out here to work with the Indian people, and I feel that you know that through Mr.

Waldo, who was the Department of Justice employee, that I feel that our tribes have been intimidated, that he has gone back to Washington and says, "I have talked to the representatives of this State, and if you guys don't do this or do that or if you don't make some of these kinds of concessions, they're going to terminate you or they're going to do some great things against you, you know."

I'm not very popular because I don't—I feel that if they want to do great things to me, well, I can do great things to them, you know. I'm not going to knuckle down to this type of threats or this type of intimidation. I think this has gone on. I feel that this last season here, this last fall season that the task force did use Presidential prestige to influence the courts. I don't think this should ever happen in Indian country where a minority—and I think when they use this type of Presidential prestige to influence the courts to reduce our fair share of the salmon, that this is wrong.

Throughout this case, ever since we won, we thought we had won a court case, that we were advised to—no demonstrations. Let's go through the court system, and you will get justice. We went through the court system. We haven't got justice yet. For every fish we have caught, we have had to fight for it.

They do various things. We have a little area up there in Lummi that we call 7-C. The fishing areas are cut up in areas. The Lummi tribe has never fished in 7-C. All season we haven't fished in the 7-C. When the chinook salmon were in there, the non-Indians fished 4 or 5 days a week, and they outnumbered us. We could take 15 percent. They could take 85 percent. They took most of the chinook salmon. Then they closed it down. They said, "Well, then the Indians can catch up." By the time they closed it down, there was an inferior type of fish over there that reduced that value to the Indian people. They closed 7-C on conservation measures.

This is what we faced since 1974, that any time that they don't want us to fish, it's a conservation measure and we are the ones that suffer.

We haven't been able to fish in 7-C all year. Now, just an hour ago, I was called out of here, saying that the State said that, you know, that if we do certain things that we could fish in 7-C. Those fish aren't salable. I told the man who asked—I said, "I hate to see the State trying to peddle these fish to our fish company. Tell them I will live by the court order but I don't want no concessions from the State as far as giving me them fish." I said, "You closed me down when there was good fish. Catch them and sell them yourself."

Maybe this was a poor attitude that I have. They have pushed us around, and we figured that the task force out here had worked with us. They have worked with the purse seiners. They have worked with the gill netters. They have worked with the trollers. They haven't talked to one of my gill netters. They haven't talked to one of my purse seiners. They haven't tried to set us up in that same category. They categorize us as a user group, but Boldt and the court says that

we're a manager of that, and just like the State—the State represents these people. We represent our people in the tribe. The tribe council represents the Lummi people in this fishing case. We felt the State is the same way.

But the task force has gone out to every user group there is, sportsmen, what-have-you, you know. And they have harassed us in every way they can and it's just downright harassment.

Our fishermen—I think I have pending in my office alone maybe 10 citations of various violations. Just last week, one of the State employees called me and said that we're going to request that you close Bellingham Bay to Indians because you have caught your share of the fish, and I laughed. I thought, well, gee, that is funny, coming from the State. When they catch their share, they never close down, that they can't do it because it is against State law. When it's the Indians' side, right now we have got to close down, so this is what I said, "I would advise our attorney that the court ruled they would close us down and we would stay closed; we don't want their fish."

MR. ALEXANDER. Could you give us some idea in a sense of just how fishing is tied to the Lummi economy and the future of the tribe and the past of the tribe? We have tended all day to talk about fishing somewhat in the abstract, in terms of who's fishing. How integral is it in the Lummi system, how many people, what part of the culture, if you will, how is it tied into the tribal system, so we have a perspective?

MR. KINLEY. Well, our tribe, 90 percent of our people always have made a living in fishing. I fished all my life. I was a commercial fisherman all my life. I fished at one time before there was too many boats. We did have a fairly good-sized fleet out there and we all did make a fairly good living out there. We requested the State that they put a limited entry 20, 30 years ago, that there was getting to be too many people in there, that there wasn't a living for everyone.

We have maintained the Nooksack River through our regulations, not through anybody's help. I think it was 2 or 3 years, Sam can correct me, that it was the first plant of any steelhead salmon in the Nooksack River that I know of in my lifetime because the Lummi Indians were fishing on the Nooksack River. The State 15 years ago closed their hatchery there because the Lummis were fishing on it.

Finally we got our own hatchery, and after we planted the steelhead in there, then the State came and planted some in there. We have never—and we maintain a good run. The thing that really bothers me is that the white race don't want to recognize that, I think, we have a few brains, you know, that if you don't have a doctor's degree or something, that you don't know how to manage a fishery.

A lot of their programs demand that you have a college degree or something before you can even do this. This keeps our Indian people that know the fisheries—if you are going to catch fish, you have got to know what they are doing and where they are going and why they

go there and where they travel. They don't want to give us the credit for knowing this much. We have taken care of this resource without anybody's help all our lives, and up until these programs came along that we put in our hatchery and our aquaculture farms. We broke that down and give it to State to show them the percentage that the State gets. We get a small percentage. I think we get a 3-percent return.

MR. ALEXANDER. On the fish that you have stocked?

MR. KINLEY. That we have stocked in the State waters.

MR. ALEXANDER. Mr. Cagey, would you want to comment on that?

MR. CAGEY. Yes. In our area, I guess we were, amongst other peoples of the world, one of the first practicing aquaculturalists.

Our path from around the islands, you can go back and see the evidence of our people's passing in the great San Juans. The Lummi Tribe has 19 special areas designated and recognized by the State of Washington. This is previous to Boldt. We have, in recent years, as Mr. Kinley has reported here, we have 11 million fish of Lummi origin swimming out in the Pacific Ocean. And if we get 2 percent of that 11 million back, Lummi is going to feel the impact of our efforts, along with all fishermen. Now, this includes foreign fleet, the United States and Canada troll fleet. The inside Puget Sound area is all going to feel the impact of our effort, along with the Makah, along with the Quinaults, and along with the other tribes that is going to be coming up with hatcheries to enhance this resource.

Lummi can prove its existence as fishermen. It can go back, and this is one of the winning parts of the Boldt decision. Lummi was able to prove that for centuries it practiced fishing in a unique manner; it was known as reef netting.

The one thing I want to say for this court, as long as we're on fishing, that during the treaties, fishing was not mentioned, only that in common, but it was left up to Indians to do the fishing because it is a pretty hard row to hoe, and Indians know how to do it. So they weren't interested in fishing in them days, and there was no talk about a 50-50 split. We had 100 percent of it. We was the ones that lost. We're the ones that give up 50 percent. Nobody gave us anything. I just wanted to make that point.

MR. ALEXANDER. Mr. Chairman, I have no further questions at this point.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Mr. Chairman, I just wanted to say that on yesterday afternoon I was driven by the staff to the Lummi Reservation. There I had a very exciting tour, because I saw at first hand an example of economic development, the aquaculture. This was quite an education for me, because it is one thing to receive the testimony, and it's one thing to look at a brochure. It is another one to go and have a tour and have a guide describe to you the process, which is a very sophisticated process. I have to admit I saw many

tanks and much equipment and still did not understand, but I'm greatly impressed.

I would certainly look forward with hope that the report—that we could at least receive into the record the report which was given to us on the Lummi Tribal Enterprises, and it would be very interesting for this Commission to receive continuing information concerning the economic development projects and any progress that has been made together with any information concerning the problems that have been encountered.

I just wanted to express my appreciation to those of you who were present and who made this tour available. I have no questions.

MR. KINLEY. We would like to submit—I thought it was going to be here today—our LITE impact statement that our hatchery and our aquaculture has given, dollar wise, that they had it all figured out. I thought it would be here today.

CHAIRMAN FLEMMING. First of all, I certainly want to accept Commissioner Freeman's suggestion that the document to which she refers to be included in the record at this particular point, and if this additional document becomes available, we would be more than happy to include it in the record also.

MR. ALEXANDER. Mr. Cagey has it.

MR. CAGEY. Chairman Flemming, we would like to submit the Lummi overall economic development plan for the record, along with, I—I think LITE has a brochure it wants to enter in, too.

CHAIRMAN FLEMMING. Without objection, that will be done at this point.

I have been very much interested in the testimony that we have been receiving the entire afternoon, really, almost the entire afternoon, relative to the Lummi Tribe operations.

You were undoubtedly here when I addressed a question to the commissioner as to whether or not any efforts had been made on the part of those who are non-Indians who own land on the reservation to sit down and talk, hopefully, when a crisis didn't confront everybody. You noticed that or you undoubtedly noted that he said, no, that that had not taken place.

Mr. Cagey, I gather from your testimony that you and your associates would welcome the opportunity to sit down and engage in a dialogue of that kind? Am I correct in that assumption?

MR. CAGEY. Mr. Chairman, you are very correct. The two ladies that testified previous to our coming here, it is very encouraging that there are people up there that we could sit and talk with on mutual ground.

As I have stated earlier in my report that we have made attempts to meet with these people, and they have been turned down and not accepted.

MR. KINLEY. Can I say one word on that?

COMMISSIONER FREEMAN. Yes.

MR. KINLEY. We tried to talk to them on various subjects, and Unger that was sitting here printed in the paper, the *Bellingham Herald*, that he didn't want to talk to us because we was a bunch of drunken Indians.

Under them type of lights and the past park director, who is now the mayor of Bellingham, all he had to do to open the portage, and there wouldn't ever have been a conflict, was to call the chairman of the Lummi Business Council and talk to him, but no, "we don't have to," you know. "Them Indians don't know any better," you know. This is the attitude they have shown toward us.

We resent it, you know. I just can't accept it. I just can't accept that attitude. If these people would change their leadership—we have never had this problem before these guys come around. The white people that lived on the Lummi Reservation bought a \$10 permit. They dug clams. They picked up oysters. We had no problems with them. We could sit down and talk. And we—there is just a new breed of people up there that have come to run us out of the country. They feel we have no right to that reservation, and they don't want us there.

CHAIRMAN FLEMMING. Pardon me, Mr. Cagey. Did you have something?

MR. CAGEY. Yes. I would just like to make this one point and leave it with the Commission: this is part of the education problem that we face. This is in the old Western Washington State College, which is now a university, but one of its tenured professors, who was teaching up in that school, a subject on Indians—she said, "Well, I have been teaching about other Indians." The thing she was teaching to her students was that Lummis cannot achieve beyond a certain point, because they're descendants of slaves and that they held slaves is the reason they couldn't achieve.

I could name the person.

CHAIRMAN FLEMMING. Don't do that.

MR. CAGEY. I won't do it. But we have had—

CHAIRMAN FLEMMING. The reason I say that is, under our law, we cannot receive such information except in executive session.

MR. CAGEY. I wanted to leave this with the Commission; it's part of our education problem. This type of thing goes on in public instruction.

CHAIRMAN FLEMMING. Mr. Kinley, I think, you made a comment relevant to the task force—that is the name I will use—at the Federal level and then the one that represents the principals here—could I just ask whether or not your tribe has had contact with the members of the task force, particularly at this level in this part of the country, and, if so, whether they have given you the opportunity of presenting your point of view on the issues that they're looking at at the present time?

MR. KINLEY. The major issues, no; you know that this is what caused the big rift between us, was that here they come and made a

decision without consulting us in any way, shape, or form on that 45-55 split.

We were sitting in the courtroom, and here somebody got instructions from Washington, D.C., or somewhere that the Justice Department get up and say this. And we never knew a thing. Our lawyers didn't even know it. I could have flipped. I was sitting in the courtroom.

CHAIRMAN FLEMMING. This gives me what I wanted, the information I needed at this point. This is a matter that we will be looking into further.

Yes, sir?

MR. CAGEY. Chairman Flemming, we had invited the task force up to Lummi, and they did come up. There is no indication that they listened to us, because we made them 11 points that we wanted them to consider. As Mr. Kinley stated, instead of listening to us, they cut our quota.

CHAIRMAN FLEMMING. Do you have any further questions?

MR. ALEXANDER. Yes. I have a couple.

In terms of the establishment of the task force, Mr. Kinley, I think the record should reflect that you were also with the Northwest Indian Fisheries Commission. Is that correct?

MR. KINLEY. Yes. I was the initial organizer of that and the past chairman of the Northwest Indian Fisheries Commission.

MR. ALEXANDER. And in that capacity worked with most of the treaty tribes in the State?

MR. KINLEY. Yes. I worked with all of them.

MR. ALEXANDER. To your knowledge, Mr. Cagey or Mr. Kinley, do any tribes or intertribal organization in the State request Federal intervention of any mediation nature, or any nature, after the victory in *U.S. v. Washington*?

MR. KINLEY. Yes. After we weren't getting anything here, we requested that they monitor the fish buyers and help us in enforcing it.

I have a letter from Dennis Austin, who is a State employee, saying that they could make regulations, but they couldn't enforce them. And I requested, you know, that Justice or somebody instruct Fish and Wildlife to monitor our buyers. There is no way we can come up with any real evidence of where these guys buy their fish. You know that they report them if caught in one area, that last year they took over a million dollars worth of fish out of area 9 and charged it to area 7. Everybody knows that the State said a year afterwards that this happened, you know, but then we got a letter saying that we can make the regulations.

I can show you clippings out of many papers that said, you know, where it quoted the State as saying that they could make regulations, but they didn't have to enforce them. Right on the steps

out here, the attorney general or somebody from the attorney general's office, you know, just advocated, just don't do it, telling this to the commercial fisherman. This is the type of thing we have fought. It's downright—you know, you just don't know what to do.

MR. ALEXANDER. We have frequently asked different witnesses throughout the day what they have seen as appropriate solutions to the range of problems. What do you define as the appropriate role of the United States Government in the general-conflict situation that seems to permeate all areas, not any single one in terms of the Lummi area? What would you have the Federal Government be doing as trustee, if that is the role, Mr. Cagey, in relation to the Lummi Tribe, be it the sewer district or what-have-you?

MR. CAGEY. Not being God—

MR. ALEXANDER. Again.

MR. CAGEY. We were in Denver on an energy problem a couple weeks ago. One very intelligent, informed man on energy told the panel that there is no single answer to the energy problem. It's going to take thousands and thousands of ideas.

I think, because we have thousands and thousands of fishermen, that sooner or later, Federal and State and tribal governments at one point are going to sit down and agree for a change and try to get out of politics and get into the management and enhancing the resource.

I think the public media has a job to do. Rather than inflame and incite the citizenry to riot and mob rule, that they start printing some rational articles, that will—we know that the masses can be controlled. It's been proven. As long as the newspapers and the TVs are looking for sensational things happening to people, we're going to have this situation.

I believe that when the politics is removed from the fishery management and start developing the fishery resource, as the Indian people are already doing, we're not fighting over who is catching 98 percent of our fish. We want that 2 percent return. We're already moving—like I say 11 million fish is a lot of fish for one tribe to produce. We have done it. Now it's up to State, Federal; other tribes are willing to do this enhancement. When that comes about, bring the fishermen, the license, down to a point—I seen one of the dissidents, member of the dissident group say that we have got 6,700 fishermen when we only need 2,700. Let's do it. We have got a couple thousand fishermen. That will help balance the measure there, the weights, 2,000 Indians, 2,000 non-Indians, we will harvest the Puget Sound fish.

MR. ALEXANDER. What about areas outside of fishing? Does the controversy seemed to be broader? Your controversy with the county government, educational system, you mentioned the media—in your view does the Federal Government have an obligation in relation to dealing with any of these types of problems, and, if so, how?

MR. CAGEY. Well, the Federal Government has a trusteeship to see that our abilities are enhanced. They're not to put us into a dependency.

The Indian should not be afraid of going forth and lose their sovereignty. We have got to be—not appeased—we have got to be strengthened by support from the Federal Government to a point where we're self-sufficient. The more jobs and the more economic development that can occur on reservations where we're handling our own resources, where we're not dealing with Peabody or Westmoreland or Ranier or Weyerhaeuser, that the Indians by vertical stratification of their own resources can become like Safeway, owning restaurants. This is what they do. They are not very careful with their mergers.

But Indians, when we sell our resource, when we sell timber, it's a one-shot deal. There is no vertical stratification for a log or a ton of coal. There is just one shot, and we get the smallest end of the economy.

The Federal Government, I think, is charged with enhancing our resources, along with the tribal governments, to make sure that our people benefit the most from our resources. To develop banks, to develop stores, and whatever it takes to make an economy, a dollar bounces six or seven times within our community before we give it to you—and I think that is where we're lacking. That's a step we have got to make. We have got to stick here, this few years we're going to be in this crisis of the white backlash. Maybe something is going to come out of it. I think the Indian people are at a point where they know what their rights are.

They have the legal clout now. We may not have the votes but your own Bill of Rights guarantees us some, that we're equal, and we have got to be protected just the same as anybody else. We're not going into Rockefeller's savings and take that away from him. We don't want nobody to come into our land and take it away from from us or our resources. We want to use it ourselves the way we want to use it, and when we get ready to let it go, whoever makes a buck off it after that, that is the American genius at work.

CHAIRMAN FLEMMING. Thank you.

MR. KINLEY. One thing I'd like to see is the United States guarantee that they protect us, protect our rights. They're not protecting our human rights. They're worried about everybody else but the Native American Indian.

You look around and see how many American Native Indians are employed anywhere in any branch but the Bureau of Indian Affairs, and even there we don't—we have got to have some sort of guarantee, you know—every now and again, right now we're in the termination period again, that they're threatening to terminate us because our economic base is beginning to build up. Every time that we make any progress, you know, then we have got to stop and fight. We could be spending this money on enhancement.

This is another thing that the damn task force is doing, is controlling the enhancement money and hanging this grape out in front of Indians. "You are not going to get this unless you do this and that." We went to court to win something, thinking we were winning justice. Now they're trying to negotiate it away from us. I can't accept it.

CHAIRMAN FLEMMING. Thank you very, very much for your testimony. We appreciate it.

MR. RAAS. Mr. Chairman, if I might add a footnote, at the request of the staff, we have prepared a documentary history of the sewer project. I'd like to offer this as part of the record.

CHAIRMAN FLEMMING. Without objection, it will be entered as a part of the record. Thanks a lot.

MR. KINLEY. We want to thank you for inviting us and your patience with us.

CHAIRMAN FLEMMING. Delighted to have you with us.

Counsel will call the next witnesses.

MR. ALEXANDER. Faye La Pointe, Randy Scott, Clay Anderson, Elaine Melior.

CHAIRMAN FLEMMING. May I ask you to stand and raise your right hands.

[Mr. Anderson, Ms. La Pointe, Ms. Melior, and Mr. Scott were sworn.]

**TESTIMONY OF CLAY ANDERSON, COMMUNITY AFFAIRS ASSISTANT,
DEPARTMENT OF SOCIAL AND HEALTH SERVICES; FAYE LA POINTE,
REPRESENTATIVE, TACOMA INDIAN CENTER; ELAINE MELIOR,
CHAIRMAN, SPOKANE URBAN INDIAN HEALTH SERVICES; AND RANDY
SCOTT, EXECUTIVE ASSISTANT, UNITED INDIANS OF ALL TRIBES
FOUNDATION**

CHAIRMAN FLEMMING. Delighted to have all of you with us.

MR. ALEXANDER. Starting with Mr. Anderson, could you each identify yourself and tell us what organization you work for and in what capacity.

MR. ANDERSON. Clay Anderson, department of social and health services and community affairs assistant.

MS. MELIOR. I'm Elaine Melior. I'm the chairman of the Urban Indian Health Services, in Spokane.

MR. SCOTT. I'm Randy Scott. I'm with United Indians of all Tribes Foundation here in Seattle, Washington. I'm an executive assistant.

MS. LA POINTE. My name is Faye La Pointe. I'm here representing the Tacoma Indian Center.

MR. ALEXANDER. If you would each indicate your tribal affiliation, that would be useful for the record, too.

MS. LA POINTE. I'm Swinomish, but by definition of the Federal Government I'm an urban.

MR. SCOTT. I'm Alaska Native. I am Haita and Tsimpshian.

Ms. MELIOR. I'm a Yankton Sioux Indian. I have been in Spokane, Washington, for 30 years, and I'm considered an urban Indian.

Mr. ANDERSON. Cree.

Mr. ALEXANDER. Miss La Pointe, could you explain briefly to us the range of problems that urban people face in the Tacoma situation and why it is necessary, or if it is necessary, to have a whole system of organizations that focuses specifically on urban Indians, what needs are those organizations meeting?

Ms. LA POINTE. I think I can explain that to you, but I don't think I can do it briefly. I will give it a whirl anyway.

I think, especially in the Tacoma area, we're facing a lot of racism due to the Puyallup Tribe's efforts to establish recognition of their boundaries, the fishing issues, the tribal enterprises, and those kinds of things. Since the city of Tacoma was partially built on the Puyallup Reservation, the Puyallups also fall under the definition of urban Indians. Consequently, it's a heavy political issue in Tacoma.

I think one of our big problems is in communication. The Indian people sit there constantly talking about morals and ethics, and we're talking to people that are more concerned about politics and economy, so there is a big communications gap there.

Needs. I think as far as needs are concerned, they're in all areas. Education—our Indian children are found at the bottom of the academic ladder, I think, in the Tacoma public school system, where we have all of those staggering statistics about infant mortality, about the rate of alcoholism, about the average life expectancy for an Indian. So I guess in trying to do something about it, it was a fight all the way, and it still is. We decided that no one was going to do it for us that we were going to have to do it ourselves. So it's been a number of years getting into providing those kinds of services.

Right now the Tacoma Indian Center provides child placement. We're a licensed child placement agency. We have an ex-offender program that serves the four State institutions. By the way, that is unfunded at this point. And the one Federal institution, we're trying to cover the county and city jail.

We have a communications center which we deal with newspapers—communications is a real problem—and television and radio.

Youth recreation—there is virtually no activities for our Indian youth, that our Indian youth fit into there because of the racism.

All of our services are, you know—all our people can use the services that the Puyallup Tribe offers.

Where do you want me to go from there?

Mr. ALEXANDER. If an Indian person is at a low socioeconomic level or at a problem level, they constitutionally have a right of access to the social services that are available to people who are at that economic level or have those problems, if the community is providing programs generally. Have those programs historically served urban Indian people in the Tacoma area?

Ms. LA POINTE. No, they have not. I think the reasons for that are both ways. I think the urban Indians never really felt comfortable or didn't fit into the various service areas. Still today, you know, that is true, maybe more so today because of the heavy political issues in the Tacoma area.

I think that there is always a big move where people are saying they want Indian people to come in and want Indian people employed in their agencies, but they're never made to feel welcome. I think, too, Indian people in the Tacoma area, it's common knowledge where you can go and get some quality services and where you can't go.

Mr. ALEXANDER. Would it be to the extent that you are aware of it, the people you have dealt with over the years, would it be the pattern for an individual who has not been treated properly by a social service agency or even a private rental agency, would it be that person's pattern to follow the standard civil rights procedure of filing of complaint, writing to the government, or is that system not applicable to or not working for the urban Indian?

Ms. LA POINTE. I think that in the past couple of years since we have gained strength, and we're kind of supporting each other, it's really become a joke to do something like that because, in the first place, you know, if you've got time to do that, you haven't got the money. If you have got the money, you haven't got the time. Then, even if you do happen to do something like that, what good is it going to do?

We have made complaints—I worked with DSHS as a community worker when I first started out a couple of years ago. One of the reasons I did go there was because I would find these little battles. And I would go with my clients, you know, to demand that they get their services or that a landlord rent to them. But you know the salaries for those types of community workers are so low that I couldn't afford to work there.

So, no, Indian people would not normally seek those kinds of services to demand their rights.

Mr. ALEXANDER. Mr. Scott, you mentioned that you are from Alaska. When did you come to the Seattle area?

Mr. SCOTT. The first time I came to Seattle area was about 1954. My mother suffered from tuberculosis, and she came down first in about 1950 to go to the Cushman Hospital. Then later in '54, she spent a couple of years following that at the Furlin Center [phonetic].

Mr. ALEXANDER. Your family moved to Seattle for that purpose?

Mr. SCOTT. Yes.

Mr. ALEXANDER. Did you enter the public schools or what-have-you, in this area?

Mr. SCOTT. Yes, I did.

Mr. ALEXANDER. Did you remain living with your family in Seattle?

MR. SCOTT. No. I did not. Due to my mother's illness and being at Furlin Center [phonetic] and to the work my father was in—my father was a mechanic and also a race-car driver. He was pretty successful throughout the Northwest in the early fifties. And all the traveling that we did as a family, the county welfare department and State welfare department came and told my father he was unfit to care for myself, my older brother, and my older sister and my younger sister at that time. Then we moved from my home, and we were all put in various foster homes.

MR. ALEXANDER. Did you stay in that foster home and grow up in it?

MR. SCOTT. No, I did not. Through the years I was in over 17 different foster homes. Every chance I got, I ran away and went home. I wanted to be home. I wanted to be with my parents.

MR. ALEXANDER. Were any of these foster homes per chance Indian foster homes or Alaskan Native foster homes?

MR. SCOTT. None of them. As I got older, I found in most of the foster homes I was put into situations where people wanted me to be their little slave or there was, you know, it was me: I was out doing the yardwork and doing that type of thing. I was never really encouraged to be part of the families which I was living with. Also, due to the fact I had run away from a number of homes, after I was in about the eighth or tenth one, I sort of got a classification as being an incorrigible young man. People just really were shuffling me around because I wouldn't stick in one place. I wanted to go home.

MR. ALEXANDER. What happened to you?

MR. SCOTT. Due to the incorrigible jacket I got put on me, a number of things happened. I really had a lot of problems in school. I didn't want to be in the homes I was in. I had started first just by skipping school and things. Then I got, you know, being picked up for truancy. When I got put into the juvenile and detention homes, I was in the Seattle one mainly. I had been in Raymond Hall [phonetic] in Tacoma, but when I was there, I was just as incorrigible as I was in the other areas, demanding that I be sent home and they leave me alone. Due to my attitudes with the people that were—the powers to be—I was put in a juvenile institution. From there, I just graduated to other institutions.

MR. ALEXANDER. Mr. Anderson, could you tell me what your job is again?

MR. ANDERSON. I have two functions. One is an assistant to the community affairs specialist, and another is to monitor private child care agencies, which deliver services to Indian children.

MR. ALEXANDER. Last year when the State of Washington testified before the American Indian Policy Review Commission, over 500 Indian children were in foster care. More than 80 percent of them were in foster care in non-Indian homes. At that time the State said that it was going to, by regulations, foster a policy of placing Indian children, where possible, in Indian homes and to change the

shift of history there. Could you explain to me, in the year that has gone by, if there has been any shift, and what capacity the State has for monitoring what goes on on a day-by-day basis in their Indian child-care situation?

MR. ANDERSON. Let me give you a little history. Foster care has been termed as short-term, temporary, or long-term care, with the goal of returning the child back to the child's natural parents. Over the past, I believe 3-1/2 year battle, there were new WAC regulations, Washington Administrative Code regulations, that were adopted by the State in reference to the State of Washington Department of Social and Health Services. Okay, these WACs were adopted in October of '76.

And if you remember back, several years ago, 10 years ago, I believe, at that time black children were in, as far as adoption by non-Indians. When I mention non-Indians, I mean Caucasian. Unfortunately, the tide has changed over the past 7 or 8 years, whereas now, Indian children are in.

As far back as January 28, 1973, I believe—this was right after I returned to the State of Washington—here in King County, and we pick on King County because it is pretty visible as far as the problem areas and the delivery of services to Indian people. At that time, one of our biggest problems was an adequate number of Indian foster homes. If we had an adequate number, we wouldn't have the adoption of Indian children by non-Indian families. At that time, I believe there were approximately 37 Indian foster homes here in King County. The department—this meeting was held at the regional department. There was a push—they had two people—I can't remember their names—who were to initiate a program directed toward the recruitment of Indian foster homes.

Up to approximately 7 or 8 months ago or 9 or 10 months ago in King County, I believe, over that period of 4 years, they had developed four additional foster homes, so there was something like 41 by then. Now, that wasn't an adequate push as far as I was concerned.

I spoke to several administrators, and they told me that there just weren't any Indian families out there who wanted to become foster parents with the department. I might—go ahead.

MR. ALEXANDER. I know that Ms. La Pointe mentioned that one of the roles of the Tacoma Indian Center was in the child-care situation. Would you care to comment on the State's policies and implementation of their policies in child care and how your system through the Tacoma Indian Center and the Puyallup Tribe works?

MS. LA POINTE. I think that after the WAC Code that Clay is talking about passed, that some good things did happen. We did find prior to even the WAC Code that there were a lot of Indian people out there that wanted to have foster home licenses and for one reason or another just couldn't fill the qualifications.

So after the WAC Codes were passed, after we did establish our own child placement agency, some real good things happened. We do have—I couldn't even tell you at this point how many Indian foster homes—probably the 37 in Tacoma that they had in Seattle at the time that are licensed right now. We're running some classes for prospective foster parents. I think the big thing that is wrong with it is that we're doing it without any money. We're using Comprehensive Employment and Training Act money to have people working there. Right now there just isn't that kind of money to run that kind of agency. I don't recall how many kids are placed, but we do have people that are keeping tabs on the kids, talking to teachers at schools, working with the parents, and that kind of thing.

MR. ANDERSON. Can I add something, Mr. Alexander?

MR. ALEXANDER. Sure.

MR. ANDERSON. Here in King County I had heard there were no Indian foster homes available. Surprising, over the past year, I believe, the Seattle Indian Center has also a private child care agency license. I believe at last count that they had developed, over a year's time, approximately 40 to 50 Indian foster homes.

MR. ALEXANDER. Ms. Melior, in the Spokane area are the problems of urban Indians distinctly different from those that you have heard described from Tacoma and partially from Seattle, or are they similar, unresponsiveness and so on?

MS. MELIOR. Right—unresponsiveness mostly. There are so many areas in which I have worked with the children and adults that I think I could talk on every single one of them, but it would take all evening to do it.

The thing that we worried most about was we were 40 miles from the Wellpinit Indian Reservation. It's been the last year or so—many people could not go to the reservation to have their dental work done or to get to see any doctors because there was no way to take them, so we finally had started to have a clinic. There would be just one dentist that would be there, coming in January. And hopefully we will have four dentists next July—these are promises. I'm quite sure that they will be carried out.

We need an overall, drastic, shortcut medication program for our school children in school. What happened, since she was talking about the little children in school, there was a little girl in school just recently—she is 12 years old—and working with a white teacher. They sent her home from school. And the story that was told to me, and I know it's true, because the girl is our secretary at—in our office. She had started her period and didn't know anything about it. She was frightened to death. So she ran and hid in the bathroom in the school. While she was in there, she was crying and nobody seemed to be able to get hold of her.

Years ago, the grandmothers taught the Indian girls and took care of them and explained to them what was going to be happening to them at a certain age in their life. But anymore, the mothers all

have to work, and they don't know quite how to go about explaining these differences to the children.

So they sent this girl home with a note that she was incorrigible and could not be managed whatsoever and was just beyond help at all and sent this little 12-year-old girl home and expelled her from school.

These are things that we need a complete medical program in every one of the urban areas. We have 5,100 urban Indians in Spokane. They're comprised of 40 different tribes of Indians.

We have a terrible problem in the alcohol program. It's just unreal. My own self in my family, I had experiences with getting basic grants for my grandchildren. I lost my daughter in 1968. And my first husband was a Sioux, also, and so it made my children way over half-Indian. When she died, she left three children for me to raise. I had to get 20 affidavits to prove that my children were eligible for a Bureau of Indian Affairs grant so they could attend college. And that took 18 months of paperwork and 20 affidavits to prove that my children were Indian.

Then, after you do prove it and are approved by the Bureau of Indian Affairs that you are a quarter degree, they come back and tell you now you can't get that Indian grant unless you get a BEOG [Basic Educational Opportunity Grant]. Then after you get the BEOG, then you go on and have to get money from another source. They make it so difficult that the children are discouraged and just throw in the towel.

MR. ALEXANDER. Spokane is east of the mountains?

MS. MELIOR. Yes.

MR. ALEXANDER. The tribes in that area are not the treaty fishing tribes of the Boldt decision?

MS. MELIOR. No.

MR. ALEXANDER. The Puyallup Tribe in Tacoma area and the Nisqually Tribe nearby have been involved in continually related fishing controversies for the past 10 years at least; is that right?

MS. MELIOR. Yes.

MR. ALEXANDER. Ms. La Pointe, when you spoke earlier, you related some of the reaction of the community, Indians, whatever tribe, to some of the local situation. Now, I guess what I want to know is, the Boldt decision does not necessarily have any implications, technical or legal implications, for Indians living east of the mountains. Would you say that the situation in Spokane is similar, that Indian people are discriminated against?

MS. MELIOR. Absolutely, very much. I know of many cases. I would like to make a report. I have made several reports and sent them in, but no one has ever answered me. I wrote to President Carter on discrimination in Spokane of terrible things that have happened there. I wrote to Frank Vester [phonetic] when he was doing this, "Are you listening?"

I was chairman of the Ethnic Cultural Society with five different nationalities or different groups. I wrote the problems to them, but it was ignored. Evidently, the urban Indians are beginning to outnumber the reservation Indians, when you have 5,100 Indians in the city of Spokane, which is 175,000.

But the difference is that we're from various tribes. Many of us have no relation whatsoever to these tribes out here. We all know that we're Indian, but we're just as different as a Norwegian is from an Italian. So they aren't as strong as the people are on the reservations and we're not able to fight as hard. But we love each other.

I'm in sympathy with the fishing here. I believe it's the most terrible thing that ever happened. That was their rights given by the Federal Government. We're all in sympathy with these fishermen over here, with the Indian-fishing rights. Every single Indian I know of in Spokane agrees that these Indians have these rights here to fight for their land and fishing.

MR. ALEXANDER. Ms. La Pointe, in terms of the Federal Government's obligation to urban Indians, what should the Federal Government be doing that it's not?

MS. LA POINTE. I had said to somebody, "I hope they don't ask me that."

I think that officials or people that are responsible should realize, you know, back in history how urban Indians came about. I think that there was a big move, you know, in the forties, in the Indian Relocation Act. I think that it was really a cultural genocide, that was an attempt in cultural genocide to be done to Indian people. Indians were moved from across the country, clear across the country, with promises of jobs, hoping that they would have better lives for themselves or their children or at least their grandchildren would maybe have better lives.

Indians came from all over the country to the big cities like Los Angeles and like Seattle. In the Tacoma area, they came to Tacoma because of the Cushman Hospital, because of the shipyards, because of Fort Lewis, because of the navy base. We have 7,000 Indian people in and around Pierce County, and I wouldn't even guess how many different tribes there are.

I think that officials or responsible people should realize how this happened, realize how the home ties were broken, and realize that we're just now getting back on our feet and also realize that we were educated in your country. We went to the public schools. We know a little bit about the politics. We know, you know, what's happening. I guess we have come pretty close to being civilized to the point of being ready to fight, literally fight and die for our rights.

I think if responsible people realized that, and we decide to sit down and really do some talking and start talking about morals and ethics, maybe we would get some place.

MR. ALEXANDER. Mr. Scott, to pick up for a second, you said that you ended up in the prison system and that you, in effect, rehabilitated yourself. Was the prison system for you another extension of being an Indian person in an alien system that didn't respond for you, respond to you? Would you describe that for me?

MR. SCOTT. Yes, I think it was. Just in general, when an Indian person gets caught up in the prison system, you really have to conform to the standards that are really truly non-Indian more so than you do in a lot of other situations.

It's also sort of like the school systems. When you go to prison, you get classified by non-Indian people and most of the people that work in the prisons, especially a prison like Walla Walla—Walla Walla is over in the southeastern corner of the State of Washington. It's a small town, maybe 20,000 people in the town. Most of the guards there come from small towns in the area, little towns like Dayton or Roseburg or Waitsburg. Most of the people that are the counselors, the people that are supposed to be helping rehabilitate you, are people that go to the—they come from very small towns just like that. They go to very small, very white middle-class-type universities and get degrees in sociology and then they come to a prison expecting to deal with the problems of the inmates, and these people are in no way educated or sensitized to the problems of Indian people coming off the reservations and for sure—also, they're not educated to the problems of any urban person, let alone an urban Indian person that is coming to the institution.

You get evaluated in the institutions on the levels that these people have lived their lives, and the values that these people have gained through their education and that Indian people don't live up to those values. Indian people don't have those values as a value in the first place.

So what happens is that Indian people don't measure up to the evaluation system, and under the system in the State of Washington you go to the parole board basically on a yearly basis. When you go in front of the parole board, the parole board looks at your evaluation and says, "Sorry man, you are not living up to our standards, and we have no choice but to keep you here another year. And we hope that you will start living up to our standards within that year." Then during that year you are not given any chance to try to even learn how to live up to those standards that they want to evaluate you on.

So I think that the Indian people really have a problem once they're caught up in that correctional system. They're kicking Indian people out the front door and reaching around out the back door and trying to snatch them up as quick as they can kick them out, so they can perpetuate the system.

MR. ALEXANDER. What are you doing today with respect to Indian ex-offenders or offenders? What is the program that you run? What kind of needs do you try to meet?

MR. SCOTT. The organization I work for is basically a cultural educational organization. Because we're an Indian organization, we're concerned about a lot of issues concerning Indian people. Because I have suffered the consequences of the State prison system, I have a lot of personal interest in helping people who first come out of the prison system.

So it's more on a personal level and with the organizational that I do deal with the correctional system, and I help people to get out—we help find them jobs. We have employed a number of ex-offenders at the United Indians of all Tribes Foundation.

Also, through my work with the United Indians, I do get an opportunity to go down to Olympia and talk to legislators. I talk to Ron Hennis' committee on correction quite often. Whenever I'm in Olympia, I check in with them and see what they're doing and see what kind of input I can have in possibly helping trying to change the system.

The impact that I'm working for is that we can get Indian problems that deal with Indian people on a level on which Indian people need to be dealt with, rather than trying to have Indian people measure up to the standards that Indian people aren't interested in measuring up to in the first place, that if we can help our own people, we're going to lessen the amount of people that are in the correctional system rather than letting them try to perpetuate it.

MR. ALEXANDER. Is the number of Indian inmates, to your knowledge, when you were in prison, and up to the present time, significantly disproportionate to the population?

MR. SCOTT. The population of the State of Washington, and I go through these statistics quite often, the Indians make up less than 1 percent of the population of the State, yet they make up to 12 to 15 percent of the populations of the prisons in the State. I would say, sure, it is grossly misproportionate.

MR. ALEXANDER. Mr. Anderson, to get back to the child welfare thing which you think somehow relates to a series of questions we were just talking about, your agency's role in monitoring child welfare placements, does it involve both public agencies and private agencies?

MR. ANDERSON. Yes—by public agencies, we would be talking about department of social health services. By private agencies, agencies such as Catholic Family Services, the LDS program.

MR. ALEXANDER. Could you spell that out?

MR. ANDERSON. Yes, the Latter Day Saints.

MR. ALEXANDER. Do the private programs constitute a significant proportion of the Indian adopting-out system?

MR. ANDERSON. Yes, very much so. The unfortunate part about—when I was first hired, I was to spend at least 50 percent of my time monitoring private child care agencies, because we have a lot of people who come from Canada or from Alaska and, you know,

belonging to some small village, and don't want the people up there to know, so the private child care agencies go under a different set of WAC regulations, which is 38875093.

The unfortunate part about it is that there is no effective monitoring system right now to find out how many Indian children are in all of the private child care agencies here in the State.

We have nine regional licensors responsible for over 600 agencies or programs here in the State of Washington. On the Indian desk, we have one, but because of the number of problems that we have in the department itself, we're just not allowed an adequate amount of time to take care of the problems in the private child care agencies.

MR. ALEXANDER. Are there private child care agencies, to your knowledge, aggressively active in trying to seek out Indian children for placement in non-Indian homes?

MR. ANDERSON. I think so, very definitely.

MR. ALEXANDER. Are there any—without getting into the name of any individual or anything, are there examples of that currently, that this is not something 5 or 10 years ago?

MR. ANDERSON. Currently—this happened approximately 5 weeks ago. I was informed by the regional Indian affairs representative here in King County that he was speaking to a certain person who happened to be a guardian *ad litem*.

She made the statement that she—she is non-Indian—made the statement that, "We're finally going to get that little Eskimo baby that we wanted."

So he informed me—because she was a part of the guardian *ad litem* system, I called up Carmen Bednowsky [phonetic], who is the head of that program, because the woman was also associated as a foster parent with Catholic Family Services. I called up Catholic Family Services, just trying to find out, you know, where is this child, why isn't this child being placed in an Indian home? Well, I was told by the supervisor at Catholic Family Services that they didn't have an Indian child, an Eskimo child, and they weren't going to place a child in this particular home.

So in the meantime, I still have an Eskimo child floating around out there. It was referred to as a mythical child.

In turn, in order to find out where this child really was or if there was, in effect, an Eskimo child, I had to call up the person herself. I spoke to her and explained my role as the monitor for the private child care agencies.

She, in turn, was very nice over the phone. She explained to me she knew of the child, that the child was associated with Catholic Family Services; earlier as I say, they said that they didn't have a child.

So, approximately 2 weeks later, I'm called into Olympia because of a letter that was written to Dr. McNutt.

MR. ALEXANDER. Identify him.

MR. ANDERSON. Dr. McNutt is the head of the department of social health services. He is the secretary. A letter was also addressed to Governor Ray, because, based on my actions, I went in there and explained to them the entire story. I was able to have some input as to the response that had to be made to this private citizen who had accused me of McCarthyism, etc., etc.

In the meantime, the two people, the foster parent and a representative of Catholic Family Services, have gone to the regional office here in King County and have informed them that they're going to file a class action suit.

MR. ALEXANDER. So that there is still the—the point of that story—there was still in a non-Indian community a strong desire to get and adopt or have foster care.

MR. ANDERSON. Indian children are in, as I stated before.

MR. ALEXANDER. No more questions at this point.

CHAIRMAN FLEMMING. Ms. La Pointe, you stated there were about 7,000 persons from all tribes in the Tacoma urban area. How many of those 7,000 does your center reach, let's say, over a period of 6 months or maybe even over a period of a year?

MS. LA POINTE. I think the first year they served about 2,200. I believe it's coming close to—I think we will see 3,500 this year. That is in the various services, everything.

CHAIRMAN FLEMMING. Yes. I appreciate that. That means about half of the persons in the area are persons you do not have contact with?

MS. LA POINTE. Right.

CHAIRMAN FLEMMING. Do you have an outreach program designed to locate those who are not tied in with the center but who may have need for the kind of help that you can give?

MS. LA POINTE. Yes. We do a lot—like I said communications is one of our big problems. We do a newspaper. We have a half-hour TV cable show. We have a half-hour weekly radio show, in just letting people know what is going on. We get referrals from the Tacoma public schools, from the juvenile courts. We realize that if a child is having a problem, the whole family is probably having a problem. So we do have outreach workers that go out to the home.

CHAIRMAN FLEMMING. If you had the resources to invest in additional outreach activities, you would undoubtedly be serving a good many more.

MS. LA POINTE. Absolutely. We would be utilizing it.

CHAIRMAN FLEMMING. Is a part of your service really information and referral? In other words, they come in not knowing what resources and services are available in the community and you in turn refer them?

MS. LA POINTE. Yes. That's right, but I think probably 85 to 90 percent of our referrals go to the Puyallup Tribe because we're located in the same geographic area as the Puyallup Tribe. They

have medical, dental clinic, family counseling, education, that kind of thing. So most of the referrals do go to the Puyallup Tribe.

CHAIRMAN FLEMMING. Do you have any special programs of any kind for older persons?

Ms. LA POINTE. No. The Puyallup Tribe has that. The Puyallup Tribe has an elders' program.

CHAIRMAN FLEMMING. What is the nature of that? Food? And meals?

Ms. LA POINTE. Sure. Food bank. They have a clinic for the elderly. They do—what do they call it—the dinners, elders' dinners. They have 1 day a month set aside where they run van service to pick up all of the elders in the area, bring them in and just kind of get together. We're bringing a lot of the elders now into the school program, because we do believe that we learn from our elders. We're bringing them in as consultants and that kind of thing.

CHAIRMAN FLEMMING. Who handles the career counseling for any age group, particularly the younger—do you have career counseling or do you refer in this case to someone?

Ms. LA POINTE. Right at this point I think that there is only one agency and it would be a family counseling agency that is doing that, because it is—it's not a funded position or positions. We're using Comprehensive Employment Training Act monies for that. About the time we get a person really trained to do that, the money runs out. That is where we are right now. We don't have one person in to do that kind of thing.

CHAIRMAN FLEMMING. Fortunately that money will increase apparently for the present fiscal year once they complete action on the Labor-HEW appropriations bill.

In connection with your participation in the CETA program, do you run into difficulties in placing Indians growing out of prejudices that may exist in the Tacoma area or in this general area?

Ms. LA POINTE. Yes. We do. I think that we have tried, you know, working with the tribe. We have tried to place our people out in the various agencies, in Tacoma, even the private businesses—and I don't think we have one place—what we are really telling them is you take this person, you train them, and we will pay for them, or we will see that they are paid for. We are not getting anything.

CHAIRMAN FLEMMING. You are really not getting any placements out of it?

Ms. LA POINTE. No.

CHAIRMAN FLEMMING. Have you or any people representing you pursued any of those cases on the ground they're in violation of the law in terms of discrimination on the basis of race?

Ms. LA POINTE. No, I haven't because I think the biggest offenders there would be like the city of Tacoma and the city authority got a suit filed to stop the Puyallup Tribe right now. I think at this point it is against the Department of Interior, asking them to place a moratorium on lands going into trust.

CHAIRMAN FLEMMING. Do you have any feeling that this resistance to the employment or to the placement of Indians has heightened over a period of the last 2 or 3 years?

Ms. LA POINTE. Sure. It's doubled, tripled maybe.

CHAIRMAN FLEMMING. You tie it back to the court case?

Ms. LA POINTE. Sure. In Tacoma it's really, really bad. It's getting pretty lonesome out there in Indian country because there is very limited services coming from outside or from Tacoma or the county. In fact, anything we do get from them we have to fight for it.

CHAIRMAN FLEMMING. Do you have any feel as to the unemployment rate as far as Indians are concerned in the area?

Ms. LA POINTE. Yes. Fifty-seven percent of our employable adults are unemployed at this time.

CHAIRMAN FLEMMING. Fifty-seven percent? Have you got that broken down in terms of the younger person? Do you know what the percentage is, for example, as far as youth are concerned?

Ms. LA POINTE. No. I think these figures were, you know, like from 18 to—life expectancy is about 47 years. No, I don't have it broken down.

CHAIRMAN FLEMMING. What help and assistance do you get, if any, from educational institutions in the area? Is there any institution, community college, or institution of higher education do you consider that has focused or that has taken an interest in the kinds of problems that your people face and seems to be willing to go out of its way to be cooperative?

Ms. LA POINTE. Yes. Fort Steilacoom Community College is very cooperative in that there is an Indian school or adult basic education GED [General Education Development] program that is accredited through Fort Steilacoom Community College for Indian adults in the Takoma area. Also Evergreen State College has been real cooperative. I don't know if it's the college or instructors, but they have been sending people out on a weekly basis to do seminars, classes in our area. It's the only ones I can think of at this point.

CHAIRMAN FLEMMING. Mr. Scott, I was going to ask you a similar question. Right now you are involved in the educational area, and I'm just wondering what kind of cooperation, help, assistance you received from educational institutions in the Seattle area.

Mr. SCOTT. Tacoma right now is a little farther ahead of us than we are. They're a little further down the road than we are in that area. United Indians presently has an adult basic education program. It's a GED program also, operating out of the Daybreak Star Center. That program is not—

CHAIRMAN FLEMMING. How much involvement is there in that?

Mr. SCOTT. Last year we graduated something like 42 students with a GED. I think we had a total enrollment throughout the year of about 60 students. This year with the new funding coming down the road, it looks like it's going to almost triple in the number of students served.

CHAIRMAN FLEMMING. Do you have any feel of what happens to those students?

MR. SCOTT. This program is going into its third year of operations. We're still presently counseling people that graduated from our classes in the first year of operations. We have a basic commitment to follow them up for as long as they need our help. That includes—of last year's graduates or last year's graduates, about 80 percent of those graduates have gone on to a higher educational endeavor. People that came to us, that when they came to us, they were people that have been turned off by the general public school learning systems or even in general the learning situation within the public system. And when they left us; 80 percent of them have gone on to a higher educational endeavor. That means either a business college or community college or vocational type or educational—

CHAIRMAN FLEMMING. When they go on and complete the next stage, do you have any feel as to what success they're having as far as finding a position is concerned?

MR. SCOTT. We have a community service worker that works directly with the GED program. And he is responsible for helping them get those higher educational placements. Upon their completion, they will come back to this community service specialist, and he will help them find suitable employment for what they have been trained in.

CHAIRMAN FLEMMING. In connection with your work in Spokane, I notice you work with the alcoholic problem. Are you receiving help and assistance from the community mental health clinics as you seek to work on this problem with your people?

MS. MELIOR. Yes, they are, but I'm not working directly with the alcoholic program. That thing has sort of gone down the tube in the last couple of months. They're receiving funds from the NIAAA.

CHAIRMAN FLEMMING. I don't know—from the NI—

MS. MELIOR. The National Institute of Alcohol and Alcohol Abuse.

CHAIRMAN FLEMMING. They've been receiving funds, and now those funds have been cut off.

MS. MELIOR. Yes. They were to be refunded as of September 1, but it didn't come in.

CHAIRMAN FLEMMING. Do you know whether they have been cut off indefinitely or whether they have been cut off because of the delay in the passage of the appropriation bill?

MS. MELIOR. Yes. That is what it was for.

CHAIRMAN FLEMMING. It's the latter?

MS. MELIOR. Yes. They're going to be coming in on the 9th or 10th. They will be coming in the 9th and 10th of next month.

CHAIRMAN FLEMMING. That impasse has been broken and funds are now available?

MS. MELIOR. Yes. So that it's possible that that could be brought back into—

CHAIRMAN FLEMMING. Well, what is your feeling, generally, as you have worked in the area in terms of the help and assistance you have had from the community mental health clinics?

MS. MELIOR. I think it's been great, as far as I'm concerned. I don't know how the rest of the people would feel—I haven't worked directly with the alcohol program. I have been on the board—as director of our clinic. This man is a recovering alcoholic. They never say they are recovered, from what they tell me, but they are recovering alcoholics. He has been sober for right onto 5 years. We have another woman who has been sober 3-1/2 years. She has received her certification. But she was let out of her position because of the funds not being available.

CHAIRMAN FLEMMING. Mr. Anderson, I note that your official position, as I understand it, is community affairs assistant to the Indian desk of the State department of social and health services. I gather, Ms. La Pointe, you occupied a position somewhat similar to that earlier in your career.

MS. LA POINTE. I was just a community service worker.

CHAIRMAN FLEMMING. Mr. Anderson, I assume your position is essentially one of advocate in behalf of the members of the American Indian community in connection with the work of the department of social and health services. What opportunities are given to you to function as an advocate to influence the evolution of policy in such a manner as to be—that it will impact on the specific problems that confront the members of the Indian community?

MR. ANDERSON. As far as policy, you must remember that I'm about 103rd on a scale of 104 as far as staff. But I'm usually involved in cases of deprivation so that I am allowed to go in and staff cases where there are problems with the delivery of services to Indian children, usually deprivation.

CHAIRMAN FLEMMING. If, as a result of taking a look at some of those cases, you feel that the delivery system leaves something to be desired as far as reaching members of the American Indian community, are you in a position where you can recommend changes in the delivery system?

MR. ANDERSON. I'm in a position where I can recommend changes. I can also recommend those changes—those changes would be recommended to my supervisor. He, in turn, can recommend changes, but as far as anything being done, that is left up to top-level administration.

CHAIRMAN FLEMMING. In other words, your supervisor is what? About two or three down in the hierarchy as far as the department is concerned?

MR. ANDERSON. Yes. He is probably a little lower than that.

CHAIRMAN FLEMMING. Let me ask, do the members of the community, who are responsible for the kind of programs we have been looking at here and you have been describing to us, when they identify a weakness in the delivery system that impacts on the lives

of urban Indians, do you have a way of getting organized and putting the heat on, whether it's a State department or a Federal department, in an effort to bring about a change?

In the field of aging, we talk about senior power and about the fact that older persons more recently have organized, and they do know how to put the pressure on the system in order to bring about some corrections. I'm just wondering as far as—I do appreciate how serious this problem is. I was the president of a college for 3 years in the St. Paul-Minneapolis area, and became very much aware of the seriousness of the problem. The nature of the problem can be identified, from your experiences and so on.

I'm just wondering whether the—I will put it this way—whether the American Indian community is organized in such a way that when you identify a weakness, you can go to some organization or some group and say, "Here is a weakness. Let's put the heat on the State government or the Federal Government or the local government, whatever the case may be." Or is this kind of a missing link in the picture at the present time?

Ms. MELIOR. That is the missing link right there. We just have no one to turn to.

CHAIRMAN FLEMMING. Okay. Well, this whole business of the delivery of service is very complex and very complicated. When you get some prejudices worked into it against particular groups, it becomes even more complex and complicated. I would just hope that those of you who have this deep concern for the urban Indian could figure out a way when you detect weaknesses, those of you who are working on it day in and day out, there is some place to go in order that somebody can go to work on trying to bring about a change.

Mr. SCOTT. I would say that in the Seattle area in particular, is what I'm most knowledgeable about, is that there is a diversity of that is available to Indians, the urban Indians. And in saying that, there is a Seattle Indian Health Board, there is a very comprehensive health delivery program. There is a Seattle Indian Center which is more or less the social service agency for urban Indians in the city of Seattle. Then there is the United Indians of all Tribes Foundation. Then there is a number of other little groups that are in the area that deal with specific issues like the Tlingit-Haida organization. They deal with issues that are related strictly to those Alaskan Natives that are Tlingit-Haida

CHAIRMAN FLEMMING. Do they all ever get together and say, "Look, we're dealing with the same kind of basic problems. We're running up against this issue or that. Let's get together and put some pressure on it"?

Mr. SCOTT. On occasion that happens, but generally I think that the diversity of the programs and the diversity that exists within the urban community shows you that the issues are really addressed by those certain agencies that are within that area, and that there is really no comprehensive coming together and saying, "Well, we have

got this issue. Would you help us?" But there is that information sharing that exists.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. No questions.

CHAIRMAN FLEMMING. I am very grateful for your willingness at this time of the day or night, as the case may be, to come here and share with us the kind of experiences that you're having in connection with what I certainly think is one of our major problems confronting our nation, particularly the urban areas at the present time. Thank you all very much.

The hearing is in recess until 8:30 o'clock tomorrow morning.

Morning Session, October 20, 1977

CHAIRMAN FLEMMING. Call the next witnesses.

MR. ALEXANDER. Ramona Bennett, Melvin Youkton, and Marian Boushie.

[No response]

CHAIRMAN FLEMMING. Will you call the witnesses again, please.

MR. ALEXANDER. Ramona Bennett, please—she may be outside. She was out in the hall.

CHAIRMAN FLEMMING. In order that we can get started, may I ask the two witnesses who are here if you will stand and raise your right hands.

[Ms. Boushie and Mr. Youkton were sworn.]

**TESTIMONY OF MARIAN BOUSHIE, TREASURER, SUQUAMISH TRIBAL
COUNCIL, PORT MADISON RESERVATION; AND MELVIN YOUKTON,
CHAIRMAN, CHEHALIS TRIBE**

MR. ALEXANDER. Could you each describe yourself, each identify yourself and describe your position with your respective tribes, and briefly indicate for us the size of your reservation, the amount of trust land retained by your tribe, also.

MR. YOUKTON. My name is Melvin Youkton, tribal chairman of the Chehalis Tribe, Post Office Box 243, Oakville, Washington. We have a small reservation. The total exterior boundary is 4,250 acres. About 50 percent of it is trust land and 50 percent—or maybe 20—non-Indian.

MS. BOUSHIE. Marion Boushie, council member of the Suquamish Tribe, the Port Madison Reservation. I also hold the position of tribal council treasurer. Our tribe has approximately 475 enrolled members. Our reservation is approximately 60 percent non-Indian and 40 percent Indian owned.

MR. ALEXANDER. Approximately how much trust land does it retain?

MS. BOUSHIE. About 2,000 acres. That is individual and tribal land.

MR. ALEXANDER. Thank you.

In terms of the functions, current-day functions of your tribal government and the services that the tribe performs, has this been a growing or recent resurgence over the last decade or 5 years? Mr. Youkton?

MR. YOUKTON. Yes, it has. There are several programs and services by the tribe, with the different agencies, and it has increased very much in the last 3 or 4 years.

MR. ALEXANDER. Before that time, would the tribal members and the surrounding community have viewed the tribe as relatively inactive?

MR. YOUKTON. Yes. I think it would be viewed that way. The tribal constitution was revised in '74 by the tribe and the Bureau of Indian Affairs to more of a workable solution to that. In fact, the tribal government could be operating under the services.

MR. ALEXANDER. Before the revision of the tribal constitution and reassertion of your sovereign powers, how would you describe the relationship between members of the tribal community and the surrounding non-Indian community?

MR. YOUKTON. Well, I think the exertion of any powers or sovereignty was down very low. In fact, it was hardly recognized by the non-Indian communities.

Could Dan Lisa come up here, too?

MR. ALEXANDER. Sure.

MR. YOUKTON. Dan Lisa, would you come up. He is the tribal secretary for the tribe.

MR. ALEXANDER. Would you hold it a minute, and we will have Ms. Bennett sworn in.

[Ms. Bennett was sworn.]

TESTIMONY OF RAMONA BENNETT, CHAIRWOMAN, PUYALLUP INDIAN TRIBE

COMMISSIONER FREEMAN. Will the secretary be giving testimony, also?

MR. YOUKTON. Yes.

CHAIRMAN FLEMMING. He will have to be sworn. If you're going to give testimony, would you please stand so we can swear you in.

[Mr. Lisa was sworn.]

TESTIMONY OF DAN LISA, SECRETARY, CHEHALIS INDIAN TRIBE

CHAIRMAN FLEMMING. Thank you very much.

MR. ALEXANDER. The question that had been asked was, at the time that your tribe started reasserting its tribal sovereignty and exercising more governmental powers, what was the effect of that exercise on relations with the non-Indian community around you and within the reservation? Mr. Youkton was asked the question.

MR. YOUKTON. Well, there is a little bit of hesitation for awhile for the acceptance of the Indian people exerting their authorities and things. I think, when we started getting programs in, Federal programs, and it was in the papers how much money we was receiving from different grants, it was real negative in the response from the non-Indian community, and the fact, I think, a lot of statements—see, we get around town quite a bit, and it's a small town. A lot of people were saying that no matter how much money and training you give to Indian people, they're still going to be Indians and squander it and not be responsive to the Federal programs.

MR. ALEXANDER. Ms. Bennett, before you came in, we had asked each member of the panel to just briefly describe the land status of their reservation area, their tribal population, and any additional population that is served by the tribe. Could you do that for us, and identify yourself for the record, please?

MS. BENNETT. Certainly. Ramona Bennett, chairwoman for the Puyallup Tribe of Indians.

Our reservation is supposed to be a 29,000-acre reservation, located roughly between Redondo Beach and Point Defiance, which is an area that is claimed by Tacoma. Eleven thousand acres were lost in the first governmental survey. Most of the lands were illegally put on tax rolls or were sold by, quote, "our guardians" in the early 1900s. The tribe holds a very diminished reservation, with much disputed lands, with no Federal assistance at this point in securing those properties. We have a river and we have a cemetery and some very small portions of what would be considered a Bureau of Indian Affairs agency tract.

There are 1,100 Puyallup members, some 7,000 Indian people living on or adjacent to the Puyallup Reservation, as it has been both the Tuberculosis Sanatorium Center and Migrant Indian Workers Center, and because Fort Lewis is adjacent to or nearby, many Indian people have been relocated there through governmental processes.

MR. ALEXANDER. We had previously asked Mr. Youkton what the history in a sense has been in the terms of reasserting governmental powers that belonged to the tribe. Is it an accurate portrayal that at the end of World War II or the early part of the 1950s, the tribe was not functioning at the same level that it is today, if that is a fair statement?

MS. BENNETT. The tribe has always made an effort to continue as a community and to continue as a family.

As I said, most properties went through alienation processes illegally, and at that point, the United States Government had a Bureau of Indian Affairs office there that served primarily as a land office or real estate company. At the point that most lands had been alienated, the Bureau closed its carpetbag and moved out of the area. The reservation suffered just gross Federal protection neglect for some 45 years, so there were not even services to keep up basic tribal roles. There was no office space, no meeting space, no basic services.

When we reasserted ourselves as an Indian tribe, deserving Federal recognition and protection, it was pertaining to fishing, and we were making repeated requests to the United States Government to protect our fishermen and our fishing rights and were making repeated requests to Washington State to cease illegal arrests and attacks and assaults against our persons within the reservation boundaries.

When we finally became desperate and began protecting our own fishermen, the local reaction of the local governments and popula-

tion was to regard us as, quote, "revolutionaries or radicals." This was simply because the Government had failed to be there by our side or in front of us, providing protection.

We didn't have Federal recognition. Therefore, this seemed to be a justification for the local governments to assist in assaults against us, best exemplified by the local Tacoma Police Department and Sheriff's Departments, coming in, in concert with State fisheries and game officials, to be gassing and clubbing our people on trust properties.

So this was our introduction—our introduction as a governmental entity—back in the late sixties.

MR. ALEXANDER. Could you describe for us the situation today with respect to the relationships with those local government communities and to what extent, if any, has the Federal role changed or not changed in terms of supporting and protecting the tribe via the trust responsibility?

MS. BENNETT. Boy, that is a long question.

MR. ALEXANDER. For sure.

MS. BENNETT. The local government entities continue to this day to be skeptical, and, whenever possible, to just ignore us, to continue ignoring our existence.

For instance, trust properties—newly reinstated trust properties—are systematically denied utilities, although the utilities are receiving Federal dollars and have their own obligations to provide nondiscriminatory services. The utilities are always withheld, and it's always necessary for that Indian person to proceed into a suit against that local governmental entity.

When dollars are available for law enforcement, our tribe, as most tribes do, prepares the needs statements, the justifications, the statistics, and we go to local LEAA—

MR. ALEXANDER. LEAA planning boards.

MS. BENNETT. We go to those boards with our plans. All of the local governmental agencies dash in and say that, "They're receiving their share of law enforcement assistance," pointing at us, and can prove that, because they statistically arrest so many more of us.

The dollars that come down for community improvements that are also supposed to be made available to all races of people are generally denied to the Indian people in the community. And so, in each case, you know, whatever the issue, whether it is child welfare or education or most particularly, you know, affirmative action or minority hiring, we're either excluded as a tribe or discriminated against as individuals.

We have a letter that was sent to Patricia Harris of Housing and Urban Development, and it contains many of these statistics.

MR. ALEXANDER. Mr. Chairman, I would like to have that admitted as an exhibit to the record.

CHAIRMAN FLEMMING. Without objection, it will be entered into the record at this point.

Ms. BENNETT. Thank you.

MR. ALEXANDER. In terms of the Federal role specifically, you mentioned the tribe, and in interviews with our staff, you have mentioned the need of the tribe to put more land into trust status to build your trust status land base. What has been the Federal Government's role in relation to helping the tribe in terms of its land status currently?

Ms. BENNETT. Just like everything else, you know, just like every other little shred of recognition, we have had to sue for it.

As you may know, there was a reservation boundaries decision. It was upheld by the Ninth Circuit Court of Appeals. The reservation boundaries have not been extinguished or diminished.

We exist as an Indian Reorganization Act reservation with full status. There were no lands put into trust for a period of some 50 years after the majority of these alienation conveyances occurred. We began about 2 years ago reinstating some lands into trust. The Government—the Bureau of Indian Affairs—with great caution conveyed a few titles.

Then the local governmental entities began screaming about “This reservation is affecting our bonding capability,” although the tribe was making no challenges, no claims, and there was no press in any way to make these people feel intimidated or jeopardized, you know. They began, through the press and through the media, developing these monster stories or scare stories about us, and then, finally, the local governmental entities proceeded into court, into Federal court, District of Columbia, to removal of our properties from trust status, to stop properties from going into trust status.

The Justice Department did assign an attorney, who waived all our rights. The Bureau and Department of Interior failed to get involved completely.

We couldn't immediately afford a lawyer, and so at this point, the Federal Government is recognizing both that Federal moratorium or injunction against trust conveyances, and they're also recognizing Senators Jackson and Magnuson and Congressman Dicks' special request to Interior to declare a moratorium against my people.

MR. ALEXANDER. On all trust conveyances?

Ms. BENNETT. On all trust conveyances.

MR. ALEXANDER. In all of this litigation, and I gather from staff interviews that the tribe has been in practically continuous litigation for at least the past 10 years?

Ms. BENNETT. That would be true.

MR. ALEXANDER. Has much of this been borne at tribal expense?

Ms. BENNETT. That would be right. We have had professors from Georgetown University volunteer to assist us. We have had community lawyers volunteer to assist us. Our tribe had no dollars, and so, largely, the fight was waged with volunteers, non-Indian attorneys, who care about the survival of this community.

MR. ALEXANDER. Ms. Boushie, a question; in the Suquamish Tribe, in terms of the same set of questions that I have essentially asked, in terms of your tribe reasserting its governmental powers, could you describe some of those powers that have been reasserted and what the reactions of the local communities have been?

MS. BOUSHIE. I will be glad to.

Our tribe—my tribe—has been active for many years. We have always had an active tribal council. We have always held general council meetings. We have always been a tribe.

Because we were involved in the Allotment Act, and the Government allotted the land to individual tribal members, they ran out of land before they ran out of Indians. So, therefore, a lot of our members became landless, and they could no longer stay within the boundaries of the Suquamish Tribal Reservation and had to move and homestead into other areas. So there are groups of Suquamish tribal members in different areas of Kitsap County. We consider them as part of the reservation, even though they're not there within the exterior boundaries.

We became extremely active in the early seventies, and as a result of our activities, we're going to be heard in the Supreme Court later this year.

When we took over, probably one of the things that happened was that because we were younger and had lived so many years in the community and had to watch our elders be treated the way they are and the loss of our culture and the loss of our language and the loss of our religion, due to the fact that it was much easier to stay back in the background and not become noticeable, then you could live there.

When our children went off Suquamish—there is a grade school there—when they went off there, they had to be bused to the local community of Poulsbo, which is 99 percent Norwegian and Scandinavian. Most of the time, if the kids made it through the eighth grade, they were doing something. When I went into the eighth grade—the seventh grade—in Poulsbo, there were 13 Indians. When I graduated, there was probably three of us left.

Some people go away to boarding school and are able to get through school, but traditionally, an Indian student could not get through North Kitsap.

When we became active, all of a sudden there was a great furor, "My God, where did all these Indians come from?"

We have been accused of many, many things—being a conspiracy, part of a national conspiracy. It is ridiculous. We have got better things to do. We only ask that we are able to exert our rights as Indian people and to be able to decide what our destiny is.

I don't think that the non-Indians has too good of a track record when you look at them and how they have planned their lives. We only want to be able to make things easier for our elders and better for our young people. In doing that, we have been continually

harassed. Whenever we try to do something, we have to prove that we have the right to do it. It is never the other way around. They never have to prove why they're making us prove it.

We're continually asked, "Show us why you need this program. Show us why your police officers should be recognized." They're not recognized as police officers. And we're not recognized as a legal employer.

MR. ALEXANDER. Recognized as police officers by whom?

MS. BOUSHIE. The State of Washington and Kitsap County.

We have several policemen now, and have had in the past—some of them have had to leave—who were Kitsap County deputy sheriffs. Yet, when we asked for cross-deputization, the county sheriff told us he was sorry, but our policemen were not well qualified and could not become cross-deputized. Yet, two of them had been on the deputy sheriff's force before they came to work for us. So I guess that shows you what kind of force Kitsap County has.

We asked that—we looked into having our patrolmen enrolled into the State of Washington retirement fund. I have some documentation here and some letters from some people who say that we're not recognized as an employer and, therefore, our policemen can't be part of this fund, even though they have, before this one, they worked for other communities and other law enforcement agencies, and were a part of it all.

MR. ALEXANDER. I would like that entered into the record, please.

CHAIRMAN FLEMMING. Without objection, it will be entered into the record at this point.

MR. ALEXANDER. Mr. Youckton had mentioned that—and you have picked up on the notion that you have had to prove everything, and people in a sense don't assume that you are a government or that you are meeting service needs on a daily basis. This is a question for all three of you. Basically, how do you respond to that? What is it that you do—needs that are not being met and needs that you can meet better than other people or whatever? I would like the record to reflect what it is that the governmental functions of these three tribes are.

The second part of it is that—I ask long questions—is, how the Federal Government, through its funding process, enables you to perform some of these services or hinders you in the performance of these services?

We will start with Ms. Bennett.

MS. BENNETT. I would like to preface all comments with what I believe to be the reason that our governments fail to be recognized.

The Washington State educational system prepares textbooks to educate all children within this State. Within those textbooks, they go to great length to discuss the Federal Government and the roles in our lives, State government, county entities, city governments, townships, within the Washington State educational system tex-

tbooks. There is no mention of tribal governments, no mention whatsoever.

They talk about Indian history just very briefly. They talk about baskets and canoes. They fail to educate their own citizens to the reality of our existence, and it's simply no wonder that the community adults are so ignorant about the law.

Our governments have traditionally had—or our communities have traditionally provided a better quality of justice, you know, whether it's the court of elders dealing in domestic problems or whether it's law enforcement people working directly with the community to solve problems. The Indian people have traditionally been less cruel and less vindictive and have traditionally been more into problem solving than into reprisals and punishments, especially in the areas of child welfare. We have a much better comprehension of our children's needs because they're Indian children. We love them, which gives them a very decided advantage in placements with our families.

There haven't been dollars previously for education, but Indian communities, you know, have traditionally stressed education throughout the individual's entire life span. I have noticed that the educational projects that are getting started now within Indian communities utilizing available dollars tend to involve elders and tiny children and all of the people in those middle years. It is quite a bit different, I believe, than, you know, the public school systems or the Bureau schools or government schools. There is a much greater emphasis on elders teaching children, sharing wisdom, and the educational processes on the reservation tends to pull the whole community together more as traditional Indian communities that have existed forever.

MR. ALEXANDER. Mr. Youkton?

MR. YOUKTON. Well, another—since Ramona spoke on education—education seems to be the point that is not very well taken on tribal standpoints on account of when the tribes are exerting their pressures or being a tribe in maybe '74 or '75, there seemed to me a lot of animosity in the public schools, and I think that maybe court decisions also in favor of the Indians brought on this animosity.

I have a couple of letters here from—one from the school. It's the response to a claim that I had put in to them. I think the animosity will show in there.

I think the superintendent is kind of saying that Johnson-O'Malley is the answer to all or most of the problems, which we don't think so. I know, Johnson-O'Malley, they use it quite a bit under Title I, and the free food service and all that, but it isn't the answer that it should be. Maybe some of the education funds should go to the tribes so they can hire their own counselors at the tribal centers to check them and see if the curriculum and different things like that is just for the Indians.

I have one letter here from the school district in response to my letter.

MR. ALEXANDER. Mr. Chairman, can we introduce that into the record at this point?

CHAIRMAN FLEMMING. Without objection, it will be entered into the record at this point.

MR. ALEXANDER. Has the tribe gotten directly involved in the educational system?

MR. YOUKTON. No. That was another point I was going to bring up later. We have attended all the school board meetings, and we haven't got a representative on the school board, which I think isn't very good, but the fact that, you know, 5 percent of the population can't put an Indian board member on the school board. So it would be helpful if we had a member on the school board, I think, for all reservations, not just ours.

MR. ALEXANDER. Ms. Boushie, you work within the school system in Poulsbo?

Ms. BOUSHIE. Yes.

MR. ALEXANDER. You indicated in the earlier part of your testimony that there were substantial problems in the schools when you were a student there. Can you tell us briefly what you do and what kind of impact that has been able to have, if any?

Ms. BOUSHIE. Lots, I hope. I'm a Title IV assistant counselor, and I'm based at the Middle School, which is a new facility. We have been there—this is our second year. Before that, it was just a seventh and eighth grade junior high. Now, it is sixth, seventh, and eighth.

I am also involved in developing curriculum and helping the other aides and other counselors in the Indian program—there are 11 of us—to develop curriculum, hopefully, within the Suquamish and Port Gamble band of Klallams culture, because this is—the largest amount of children are from those two tribal areas.

The North Kitsap School District has two reservation, five within its boundaries. Yet, until 1967, there was not an Indian program of any kind. There was not a person that was even employed, as an Indian, in the program.

The reason that we have a program is because a high school teacher made the comment, "If you want to see a ghetto, go to Little Boston." There were three Little Boston children in that class. The girl went home to her mother and cried and told her mother what that teacher had said. From there, they went to the school board, and now we have had a program—this is our eighth year.

MR. ALEXANDER. This is the initiation of the Indian—

Ms. BOUSHIE. This is the only way.

MR. ALEXANDER. Little Boston—just for the records, is where?

Ms. BOUSHIE. Port Gamble band of Klallams. It's the traditional name.

Until that time, there wasn't anything for Indian students.

I held a workshop several years ago, inservice for teachers. I made several statements that obviously must have upset some of the teachers I had, because I had one come to me, who was an administrator, and said to me, "I didn't know you felt like that."

I said, "Well, you never asked me." And this is the way it is at that school.

Now, we have some good programs. We're doing some good things. We're graduating students. Students feel good. They're becoming involved in school, but we still do not have the kind of respect that Indian people should have. We go into classrooms, sure, and we give our presentation, but we have to do all the work. It is initiated totally by us. The teachers think it is great, because we come in for an hour, and they don't have to do anything. If I turn to them and say, "Here are things that you now can carry on after what I have done," it never happens.

MR. ALEXANDER. Are any of the programs that you mentioned were supported by Johnson-O'Malley before—

MS. BOUSHIE. Never.

MR. ALEXANDER. Has the school district, to your knowledge, out of general revenues, outside of special Indian money, incorporated into the school system out of its funds any programs?

MS. BOUSHIE. A very small amount. I will say that we do have a superintendent, who unfortunately is leaving us, who is very supportive of Indian programs. He has supported us. He has supported us, and they have funneled in some money. We do have, in fairness to the district, I do have to say, we have had four levy failures. So there is no money. When there has been money, generally, it has been spent on a non-Indian certified staff member. They put in a little telephone money, a little postage.

MR. ALEXANDER. Would you agree with Ms. Bennett's comment earlier that the educational system's portrayal of Indian communities to both Indians and non-Indians is related to the type of reaction that is seen in the community today?

MS. BOUSHIE. Oh, definitely. Definitely.

MR. ALEXANDER. In your view of the current curriculum used in your school system, is there any major difference from that that you had when you were a student in those schools?

MS. BOUSHIE. Yes. It is poorer than it was, because there is more of it, but it is not good. I have looked through some of the social studies books. It is poor. What is there is either taken out of context or the wrong kinds of things are shown.

Right now I'm trying to develop some curriculum in government so that the non-Indian children will realize that we're not a tribe of Indians like they see on TV, that we do have an organized group, that we do have a chairman, that we do follow rules and regulations, and that we do have a constitution and bylaws, and that the United States Government's Constitution and bylaws is based on the five

civilized tribes, which nobody seems to know. If they do, they don't say anything.

MR. ALEXANDER. Ms. Bennett, when you spoke with staff, you expressed a slightly different view of tribal children attending public schools. If my recollection is correct, you thought that, you—I gather—said that it is basically a hopeless situation, that the tribe needs to educate its own children. If that is correct, would you expand on it?

MS. BENNETT. Our situation, you know, I realize, is a little bit different than even the neighboring tribes. As I said, you know, the city of Tacoma could be considered a military town. The attitudes, because of the fishing controversy, you know, and the very fact that there are Puyallup survivors has created continuing racism. We have, in addition to that racism, the distortions in the history books, the distortions in the books about government, and we have some 71 percent of the Indian people between the ages of 19 and 25 that have no high school completion, no diplomas.

We began doing a remedial program, taking the dropouts and pushouts from the public school system, the ones that had been out of school for a prolonged period of time. Most of them tested 4 to 6 years under their grade level, coming in that many skill-years behind.

We set up a special reading, writing, and math remedial education program and found that we could, working with junior high kids, bring them up, you know, an average of 2-1/2 years in 1 school year just by caring about them and putting materials in front of them that were nonoffensive and noninsulting.

From that effort, just the preschool and the junior high, this year we have expanded our program for a preschool through 12th grade program and have some 230 or 240 young people attending the Puyallup Reservation school district.

We are finding that the attendance is a lot better. The interest is a lot better. It is encouraging many of the parents to reinvolve themselves in the educational processes because of the terrible unemployment problems in that community. The development of those educational skills is just, you know, critical, critical to family survival. So the tribe has concentrated on developing a full, noninsulting educational program for Indian people, and we are finding that it works very well.

Our tribe also had the same problems all of our neighbors have with health. The local clinics would not serve Indian people, because public assistance would always say, "Well, that is an Indian Health responsibility," and Indian Health would always say, "Well, it is a public assistance responsibility," and the bills would bounce. And so, you know, even if the Indian people had their own insurance or had dollars in their hands, the clinics had developed a policy of just not seeing Indians because their bills were such a problem.

And so, we developed a clinic concept, and we did go before Congress and got a special line-item appropriation for a clinic and have the only Self-Determination Act clinic in the Nation that has been fully developed and is fully managed by an Indian tribe.

MR. ALEXANDER. Just one point of clarification: the people that you serve are Puyallup and other Indians from the Tacoma area. You serve the urban Indian community?

MS. BENNETT. We considered that reservation, which legally it is—yes, Native American people residing within or contiguous to the reservation boundaries.

The other area of concern that I had mentioned, of course, was the child welfare area, and I know both of these people have been very involved in that same area. Some 25 to 35 percent of the Indian children nationally are adopted, in foster homes, incarcerated, or institutionalized. This State is the third most offensive State in the practice of child removal. There are a series of horror stories that are available about illegal deprivation, deprivations by fear, by pressure, because many of our people lack these basic skills to prepare court cases and have been taught to sit down and shut up, you know, by the school systems. When racist social workers began assaulting the family unit, the Indian people have historically just withdrawn. The racist local judge will work right along with that caseworker to alienate that child. We have the only group-home, child care institution managed by an Indian tribe that is currently in operation in Washington State. What we're getting right now are the returns from those processes, and the kids that are no longer cute little babies that these people no longer want, that they're kicking out.

So, we're getting kids who will never be white, who have been raised completely outside of Indian communities and have in most cases very little respect for Indians, because they have been taught not to respect themselves, coming back to us, so we ask governments, because the subject is Indian reservations as governments. We have every responsibility that the Federal Government has and every responsibility that a local government would have, plus all of the human problems of a population that has been subjected to racism and neglect.

Our human service problems are enormous, you know, for small population. We have some 90-percent clinical alcoholism rates and median educational levels for adults, someplace between the fifth and the ninth grade. We have unemployment, underemployment, inadequate housing, lousy local services from schools and hospitals.

So we have some really enormous burdens that we take on, and then every time we move an inch in the right direction, there is someone there to just step on us, you know, to try to be pushing us back. And so we do go back. You know, we go back to that treaty, that contract with this Federal Government that says that our tribes, our reservations, our communities have a right to life, a right to live, a right to be self-supporting. In our case, through fisheries,

we can be sovereign and still hold out our hand for that education and health money. It is guaranteed by a treaty, and millions of acres of valuable real estate have been exchanged for those rights.

I think that is the whole reason for the backlash that, you know, we have the audacity to stand up and believe in the United States Constitution and the Federal treaties. It becomes more obvious that Indian people have a greater faith and more confidence and a greater belief in the basic system of the United States Government than most of these ones who are citizens of that Government and who represent that Government.

CHAIRMAN FLEMMING. I would like to ask all three members this question. In your area of the community, are there individuals or non-Indians or groups of non-Indians who are working with you or who show a willingness to work with you as you endeavor to develop and strengthen your own governmental entities?

Ms. BOUSHIE. I guess if they are, they are a very silent minority, because traditionally anyone who has tried to support the Suquamish Indian people, the tribe, have had their windows broken and have had obscene phone calls and have been told, "If you keep it up, you will be sorrier."

So most people within our community, if they do support us, they support us quietly on the side. They stop and say, "We really believe in what you are doing. We believe that you do have these rights, and we do support you, but don't tell anybody that we said this to you." They're afraid for what the community is going to say to them.

We, all of a sudden, in the Suquamish area, in the Indian-owned area, have a very active non-Indian group. I'm not sure I understand why these people are so violently against what is only our right to do and that is to decide the destiny of our own people.

It has gotten to the point where, when they have meetings, the only time anybody shows up for a community meeting, is, "Well, we're going to rip the tribe tonight," so everybody comes.

We have had numerous petitions, ridiculous petitions, you know, that don't make any sense, except that our attorney does say that it gives them a chance to let off steam. We have had our windows broken. We have been harassed. We have had our policemen harassed. We have been harassed personally. Our children are harassed in school.

For instance, my own son—my husband is a Cree from Montana and he wears his hair in braids. My son said to me when we were in Seattle one day, "Do you think we could buy daddy a wig? I don't want him to cut his braids, but I don't want anybody to see him. Maybe they will leave me alone."

That is when it hit home to me that things are really bad for our young people. They are worse, I think, than they were for me. As long as I, when I went to school, was quiet and didn't bother anybody, they ignored us. Now that we have become vocal, our children are being harassed in school. They're being made to feel that they are

not worthy, that their parents aren't worthy. I have to continually support my brothers, who are still in school, and my son and my family, because what I do does bring backlash to my family.

CHAIRMAN FLEMMING. As far as your area is concerned, you can't identify anyone who is in a public office, for example, who is willing to work cooperatively with you in the development of the government that you represent?

Ms. BOUSHIE. I'm very sorry to say for the non-Indian people that, no, I can't.

CHAIRMAN FLEMMING. Although there are individuals who, as you say, will indicate to you in conversation that they're supportive, there is no organization of citizens who are supportive?

Ms. BOUSHIE. None.

CHAIRMAN FLEMMING. In what you are attempting to do?

Ms. BOUSHIE. In fact, just for the record, I might add that a Congressman, who had earlier in the year said that he was interested in working with the tribe, made a statement to the tribal office staff this summer that he informed his aides to tell our staff members that he was very sorry, but that he could not work with the tribe until President Carter's task force had met and made some decisions, and until then, please not to call him, because he could not work with the tribe.

CHAIRMAN FLEMMING. You wanted to add to this?

Ms. BENNETT. Within any community that is on poverty flats organization, you know, community organization for those people usually begins in a church basement, and for a Suquamish, there ain't even a basement in the church. The area that we reside in has a number of very active church groups who are poor folks, who are supportive. That is true. Within Tacoma urban community, there is an organization named Urban League that has been helpful in making information available and in assisting in the very beginning with the utilization of office equipment, telephone, and space for meetings. There is a lot of help, and there is a lot of understanding, but it is traditionally with people from poverty flats also.

The Jewish Anti-Defamation League provided us security officers and witnesses during periods of time when arrests were taking place and regular assaults against our persons. They did come out to serve as credible witnesses.

We wouldn't have made it without our friends, because our tribe has been extremely vocal and extremely active. We have attracted a lot of Justice Department community workers and a lot of United States citizens that do care about their Constitution and about the foundation of their Government, who have come to help us.

Because our tribe has been so concerned about natural stocks and fisheries many environmentalists have come to work with us on just those issues. The brother and sister nations that fish are critical to the survival of our Indian nations so we have a special emphasis on that natural resource protection, and that emphasis has been

stressed on a national level. Many good people have come to just work with us on those key issues.

So I can't say that we have really been alone, but I will say that most of the ones that have been concerned about us have been just as poor and just as discriminated against as ourselves.

CHAIRMAN FLEMMING. Are there any public officials within your particular area that you find it possible to work with and that are helpful in trying to strengthen your governmental community?

Ms. BENNETT. There have been a very tiny minority of local State representatives that have been—

CHAIRMAN FLEMMING. How about the county commissioners?

Ms. BENNETT. It depends so much on the issue. You know, if you're talking about housing, you know, you will get one reaction. If you're talking about employment, you know, they will have a different viewpoint. It truly depends on the issue.

I will say that the county commissioners do tend to deal with issues and not just pure blatant racism. I would say that the Tacoma city council is more controlled by fear, largely because of the status of the Port of Tacoma, you know, and the reservation boundaries.

CHAIRMAN FLEMMING. Mr. Youkton, do you want to respond to that?

MR. YOUKTON. I don't know of any non-Indian organizations that has been helpful to us—maybe a little bit on the college level with the nearby Centralia College has been helpful in our Indian action team training program—

CHAIRMAN FLEMMING. Which college is that?

MR. YOUKTON. Centralia Community College.

CHAIRMAN FLEMMING. Community College.

MR. YOUKTON. We have got accreditation, plus our training members can receive college credits for the training that we're doing at the tribal level right now.

I think that is about the only one that has worked fairly closely with us. Otherwise, we haven't seen much cooperation from the county commissioners. It seemed like reservation roads are indeed just a low priority on the county's part, plus law enforcement. That is another low priority to the reservation.

CHAIRMAN FLEMMING. I would like to go back to the education area for a moment. I was interested in your comment. The textbooks that were developed at the State level for use in history or social study classes, you commented on the fact that they did not contain any reference whatever to the tribal organization and government through the tribal organization. How old are those textbooks? When was the last one published? What year, approximately?

Ms. BENNETT. Apparently, there are some new texts that are going to be available this upcoming year that do include one paragraph on tribal governments, and those would be apparently Washington State governmental texts.

CHAIRMAN FLEMMING. Do you know the history back of the decision to include the one paragraph on tribal government? Was pressure exerted at the State level which produced that result?

Ms. BENNETT. There was a very active little core group of teachers in Tacoma that just have been screening and scanning every new text that comes out for content on Indian people, and they had protested the lack of inclusion of Indian tribal governments as governmental entities, and their protest has resulted in this small insertion.

CHAIRMAN FLEMMING. I was also interested in the role of the counselor—is that the term that is used? As I get the picture from your testimony, at stated times you go into the classrooms, and during that period of time, you endeavor to provide the students with some understanding of the Indian culture, history, the tribal government, and so on. While you are there, is the teacher in charge of that particular group also there?

Ms. BOUSHIE. The teacher has to be there because a certified person has to be in the classroom. I was given last year a special consultant certification from the State of Washington to go in and teach, but because the teacher associations were so against that, because they felt that I wasn't qualified to go in and teach about Suquamish tribal history and government, that the teacher still had to stay in there, even though I was technically certified by the State of Washington.

CHAIRMAN FLEMMING. Are you provided any opportunity, within your school, of meeting with the certified teachers and endeavoring to provide them with background in these areas?

Ms. BOUSHIE. I had the opportunity, but usually a teacher is only interested if they're going to get credit for something. If they're not going to get a college credit or indistrict credit or not going to be paid for it, it is kind of hard to get them there. In fairness to the teachers in my building, some of them are really are interested. They just don't have the time and money to do it. I still, even today, have to initiate. I have to go to them and say, "Hey, how about having me in here?"

I have been involved in some classrooms on a regular basis, year to year basis as part of their curriculum.

CHAIRMAN FLEMMING. To your knowledge, in connection with inservice training of teachers, are any of them required to take work that would provide them with that background or are they provided with the opportunity of taking work?

Ms. BOUSHIE. No, on both questions.

CHAIRMAN FLEMMING. No on both—no opportunity in the existing institution, the higher-education institution in the State to obtain training along this line?

Ms. BOUSHIE. It is there, but because it is not a State requirement for the teacher to have these credits, usually, unless there is an interest, an individual teacher has an interest—there is one teacher

out of 35 certified staff at the Middle School, one teacher has taken some ethnic, minority kinds of classes out of Western Washington and attended a workshop put on by advocates for Indian education in Spokane. She did this on her own. It is not required.

Like, Montana now has new legislation where everybody who teaches an Indian child is going to have to have some hours in, in Native American studies.

CHAIRMAN FLEMMING. Has any effort been made in Washington to have legislation of that kind passed?

Ms. BOUSHIE. Yes, it has. As a matter of fact, in the State of Montana, the board of regents for the colleges and universities there have just now made it a policy that anyone who goes out of a college in Montana with a teacher's degree will have six credits in Native American studies.

CHAIRMAN FLEMMING. There is an effort being made to duplicate that in the State of Washington?

Ms. BOUSHIE. There was, I understand, and it was crushed immediately. I'm on a State board for Native American education here in the State of Washington. Hopefully, I'm going to be able to start them again on this because I really feel that it's important.

CHAIRMAN FLEMMING. In other words, that rests back on the assumption that a teacher is not qualified to go in and teach in a school where there are members of the American Indian community unless he or she has had this kind of a background?

Ms. BOUSHIE. Most of the teachers that you're going to come in contact with, like in the town of Poulsbo, where the two, the high school and middle school are located and two grade schools, most people don't even—a lot of new teachers don't even know there are two reservations within the boundaries, let alone what an Indian is or how they feel about anything. I'm not saying that, given the opportunity, they couldn't be sensitized, but I'm not sure about that. Right now, they think everyone is the same.

CHAIRMAN FLEMMING. But they're not right now being provided with the opportunity?

Ms. BOUSHIE. No.

CHAIRMAN FLEMMING. Commissioner Freeman, do you have a question?

COMMISSIONER FREEMAN. I wanted to pursue the subject with respect to the State board of education. Is that the name of it, for the State of Washington, in terms of the students—the board has the powers, without any additional—am I correct that there would not be the need for additional legislation for the board to make a policy determination that the teacher, the certification, or at least a continuous certification would require certain additional involvement or relationship orientation?

Ms. BOUSHIE. Out of Mr. Brulett's office—the superintendent of public instruction—several years ago, when it was offered to us at a Northwest Indian Education Conference in Yakima and was hosted

by the Yakima Nation, at that time one of his aides came and handed out a policy statement and had 10 or 12 things that the superintendent was saying that all school districts have to do for Indian children if they have Indians in the district. I, unfortunately, didn't bring that. That was as far as it got. It was introduced, and everybody went, "Hurray. Isn't that great," and we all took it back to our superintendents and it was mailed out and it was published and nothing more has been done.

COMMISSIONER FREEMAN. There has been a policy statement, but it has not been enforced or implemented?

Ms. BOUSHIE. Right.

CHAIRMAN FLEMMING. I would ask the staff if they would endeavor to obtain a copy of that statement and have it inserted in the record at this particular point.

COMMISSIONER FREEMAN. Mr. Chairman, I would like to even go further, and that is ask if the staff will communicate with the department and ask the department to respond to what has been done with respect to the implementation and enforcement of that statement.

CHAIRMAN FLEMMING. I concur.

Thank you very much for your—there is one question I would like to ask, one more—you referred to the—Ms. Bennett—you referred to the relationship of the fishing industry to the economic well-being of the members of your tribe. Could you just sum up for me briefly what the current situation is in terms of their opportunity for involvement?

Ms. BENNETT. Well, our fishery is a different kind of a fishery. Just some 4 years ago, we were being accused of taking every fish or having the potential of taking every fish and permanently killing these runs. Now, I see the Washington State Fisheries Department saying that we can't even catch 50 percent.

Our fishery is a river fishery, and because of the excessive issuing of licenses to the non-Indian fishing fleets by the Washington State Fisheries Department, there are very few fish returning to our river systems where our fishermen fish, so our fishermen are constantly having to stop fishing to conserve or protect stocks.

The non-Indian fleets fish on those fish from Alaska down through Canada through the straits and on into Puget's Sound. They follow those runs and fish them very heavily.

Even with the Boldt decision, we are finding too few fish coming home to support that federally-protected economic base, you know, named the Indian commercial fishery.

Mel has some things that he wants to read into the record. They are really important, and they do relate to utilities and services.

CHAIRMAN FLEMMING. I appreciate that.

MR. YOUKTON. Is it just about time?

CHAIRMAN FLEMMING. We have run out of time, but we will take time. You go ahead.

MR. YOUNKTON. I have got a couple of letters I would like to read showing some of the animosity from the—this is from the Thurston County Fire and Protection District Number 1. It is pertaining to the fact that they won't answer calls to the trust property, fire on the trust property, which we wasn't aware of, and we supported the volunteer fire departments for many years, the different Indians that live in Thurston County.

In 1975 all of a sudden, it was cut off, you know. They said, "You are not paying taxes, so, therefore, we can't answer calls on your reservation."

We have two letters I would like to submit, plus another letter. I talked on just a minute ago on the low priority of the roads and bridge systems of Thurston County, also.

CHAIRMAN FLEMMING. Without objection, we will be very happy to receive those letters for insertion in the record at this point.

Thank you very much. We are very grateful to all of you for being here and giving us the benefit of your insights. Thank you very, very much.

Counsel will call the next witnesses.

MR. ALEXANDER. Gerald Thomas and Emmett Oliver.

CHAIRMAN FLEMMING. Please stand and raise your right hands so that you may be sworn.

[Messrs. Thomas and Oliver were sworn.]

TESTIMONY OF GERALD THOMAS, DEPUTY SECRETARY, DEPARTMENT OF SOCIAL AND HEALTH SERVICES; AND EMMETT OLIVER, SUPERVISOR OF INDIAN EDUCATION, OFFICE OF THE SUPERVISOR OF PUBLIC INSTRUCTION

CHAIRMAN FLEMMING. Nice to have you with us.

MR. ALEXANDER. Could you each, starting with Mr. Thomas, identify yourself for the record and your position with the State government?

MR. THOMAS. Yes. I am Gerald Thomas. I'm the deputy secretary of the Department of Social and Health Services for the State of Washington. The department is the umbrella agency for human resources.

As the deputy secretary, I'm the administrative officer for the programs concerning adult corrections, juvenile corrections, mental health, developmental disabilities, vocational rehabilitation, health services, community social services, and public assistance.

MR. ALEXANDER. Your subpoena *duces tecum* requested several documents. Are those available?

MR. THOMAS. Yes, sir. You requested two documents. One is referred to as the "Select Panel Report to the Governor," which is a study of the department of social and health services and recommendations for its organization and programming. That is here.

The second report you asked for was one which was being prepared for the Governor's office at the request of the Indian Advisory Committee. That report is not yet completed. I have brought the summary volume with me, and it is open to anything in it you would like to examine. The dollar figures are not complete. The report essentially was extremely comprehensive. We have been working on it for a number of weeks, asking detail on the number of dollars we have spent.

MR. ALEXANDER. When will the report be ready?

MR. THOMAS. I think, sir, that we probably will have it ready within about, I'd say, 2 to 3 weeks.

MR. ALEXANDER. The subpoena will continue for the purposes of that.

MR. THOMAS. We would be most pleased to furnish you with a full—

MR. ALEXANDER. Mr. Chairman, at this point, I would like to have both of those documents, the one that is available and the one that will be available, inserted in the record as exhibits.

MR. THOMAS. Excuse me—if I may, the volume I brought with me is also not complete. You will notice on the first page, the dollar amounts are still written in ink. They have not been confirmed. Are you asking that I leave it?

MR. ALEXANDER. Yes. We will get your final copy from you.

MR. THOMAS. Thank you.

CHAIRMAN FLEMMING. Without objection, both of the documents—one that is in its present form and both of them in their final form, will be inserted in the record at this particular point.

COMMISSIONER FREEMAN. And that subpoena as to those documents will continue in effect until the documents have been received by the Commission.

CHAIRMAN FLEMMING. Correct.

MR. ALEXANDER. Mr. Oliver, could you describe briefly—identify yourself for the record and describe just very briefly your responsibilities.

MR. OLIVER. My name is Emmett Oliver. I'm supervisor of Indian education in the office of the superintendent of public instruction, located in Olympia, and my chief assignment and function is to administer the State Johnson-O'Malley program.

MR. ALEXANDER. We have had over the past day and this morning almost continual testimony, no matter what area we have asked questions in, as to the impact of the educational system, both on Indian students and non-Indian students.

It was mentioned earlier that there is a policy of the department of education to enhance Indian education to provide materials in the school systems and so on. To your knowledge, has that policy ever been effectively implemented?

MR. OLIVER. I was called upon recently to give a progress report on that policy statement by the superintendent of public instruction,

and I have brought with me a chart which shows some progress. I would for the information of the panel, I would be happy to illustrate this at some time during the testimony.

I do not have the printed policy statement of the superintendent with me. It was attached to an annual report, and yesterday in Yakima, I unexpectedly surrendered this annual report to someone who wanted it, and the policy statement was in there.

MR. ALEXANDER. Is the short answer to the question on full implementation of the State policy, no?

MR. OLIVER. Would you repeat the question, sir?

MR. ALEXANDER. What is the short answer? Has the policy been fully implemented?

MR. OLIVER. I would attempt to illustrate to you here.

The blue was an estimate by myself and my associate that, in the seven items that were included in the policy statement, we tried to show graphically what progress has been made in implementing the policy.

CHAIRMAN FLEMMING. Could you take each one of those and just briefly indicate what the policy statement was?

MR. OLIVER. Yes, sir. Yes, sir.

Number one was involvement of Indian people themselves in the education process, either through participation on a school board, school board members; serving on the various parent-education committees, which sponsor, implement, and monitor these categorical programs, Johnson-O'Malley and Title IV, part (a).

We have been keeping records on a number of Indians who have been employed in the public schools in terms of classified personnel, certificated teachers, Indians, and we have tried to gather as much information as we can. We have called this involvement number 2—

CHAIRMAN FLEMMING. What is the significance of the two colors?

MR. OLIVER. Beg pardon?

CHAIRMAN FLEMMING. What is the significance of the two colors?

MR. OLIVER. The blue represents what we estimated existed in 1975, and we tried to update this by showing that the red represents some additional progress.

CHAIRMAN FLEMMING. Would 100 mean that there was significant involvement in all of the school districts where the American Indian community is represented?

MR. OLIVER. Yes. We try to measure comparable kinds of involvement. The teacher ratio of a non-Indian child to a non-Indian teacher—we look at how many Indian children go into classrooms where there is an Indian teacher. So we tried to make those kinds of comparisons. If Indian children had an Indian figure in the classroom, we would say that would be 100 percent. We need some 1,800 Indian teachers in the State of Washington to come up with any kind of a comparable pupil-teacher ratio.

CHAIRMAN FLEMMING. In the interest of time, we certainly would appreciate your supplying for the record the complete policy and

statement, so that as we examine the record, we can relate each policy statement to the material that you have on the chart. I don't think we have the time to go through each one of those at the hearing itself.

MR. OLIVER. Okay. Number 3 is the preservation, the study, promotion, and printing of cultural and heritage materials for the public schools. We have done some work in this. We have published—I do not have with me—but we have published and made available for teachers—we have had free printing of what we call the teachers' guide for the instruction of the culture and history of Indians in Washington State. This is distributed by the superintendent of public instruction's office, for no charge. We have had three printings. We have printed about 4,000 copies of this. It is available.

MR. ALEXANDER. Mr. Oliver, if you would make that chart available to us, I would like to have it reproduced and entered as an exhibit in the record at this point, to save some time.

Mr. Thomas, there have been a number of statements throughout the hearing and in the range of our interviews about apparent ineffectiveness of the delivery systems of many of the programs that come under your umbrella. What monitoring system does the department have, if any, to assure that the programs that you are responsible for reach the Indian community in an effective manner? What is your monitoring system?

MR. THOMAS. I think your first statement helps answer the question. You are right—we don't have adequate services in the human field. In fact, human service needs are almost a bottomless pit. So we have a tendency to put as many resources as we have into the delivery of services. We probably have not had as much monitoring as we should, but our basic system places the responsibility on monitoring what we call our Indian desk in our department.

MR. ALEXANDER. Where is that located?

MR. THOMAS. The Indian desk?

MR. ALEXANDER. Structurally.

MR. THOMAS. All right, structurally, it is part of the headquarters office.

MR. ALEXANDER. It reports to the—

MR. THOMAS. It reports to the deputy secretary of the department for its programmatic policy questions, reports for the day-to-day operations and the administration and reports within the bureau of social services. It is located within the bureau of social services, yes, sir.

CHAIRMAN FLEMMING. How far down the line is the person who actually is charged with operating this desk, the organizational structure? Is it the third, fourth, or fifth level or where?

MR. THOMAS. I would like to go back and finish the answer on what the monitoring system is, Mr. Flemming. I will answer your question now.

On the policy guidance, the policy decisions relative to Indians, the Indian desk reporting is to my office. I'm the number two man in the department. The bureau of social services, where they're assigned to the day-to-day operations, that administrator is the fourth administrative level in the department.

MR. ALEXANDER. Is it a policy position or staff position? Or line position?

MR. THOMAS. Okay—line—thank you. With that, it is not a line authority position, where it has line authority over the field operations of the institutions of the department, although, I assure you I have line authority.

MR. ALEXANDER. The Governor's select panel—

CHAIRMAN FLEMMING. He wanted to complete the other answer.

MR. THOMAS. Well, I mean, that is the basic responsibility of the Indian desk, which communicates its information to our headquarters office.

There are a number of communications to our field administrators office on policy, that makes them also responsible for carrying out the policies.

On the regional administrator staffs and down at what we call our local office staffs, there are a number of what we call Indian community workers that do not carry caseloads as such or necessarily do eligibility for public assistance but involve themselves in the advocacy and in the monitoring of our service.

MR. ALEXANDER. These would be mostly case-aide type positions?

MR. THOMAS. Yes, sir. We have an inadequate number, but that is the system.

MR. ALEXANDER. The Indian desk has a staff of how many persons?

MR. THOMAS. Two.

MR. ALEXANDER. Out of a department of how many persons?

MR. THOMAS. You want to know how many Indian employees we have?

MR. ALEXANDER. No—just how big your department is.

MR. THOMAS. 13,000 employees.

MR. ALEXANDER. Do you know for this fiscal year the amount of funds that you will be disbursing?

MR. THOMAS. You took my notes away from me when you took that report. I think it's \$13 million a year. It is just right underneath the cover there, those figures. It is just under \$13 million. As I said, those figures are not complete.

MR. ALEXANDER. The Governor's report, which you submitted to the record, recommends that, as part of the department's commitment to improving services to Indians, that an office of Indian affairs be created which should report directly to you. Is that being done, or is that under advisement? What is the status of that recommendation?

MR. THOMAS. The status of the total report is that we will probably have our draft response ready shortly after the first of November, at which time the secretary of the department will review it for concurrence with the Governor.

To answer your question directly, we have not arrived at a definite decision on that recommendation. If you want my personal opinion or the direction that I'm recommending, I'm recommending that we do that, yes, sir.

MR. ALEXANDER. When you testified before the American Indian Policy Review Commission in Yakima, Washington, approximately a year and a half ago, you submitted data to that commission which has since been published, that approximately 80 percent or slightly better of the Indian children in foster care were being placed in non-Indian homes. Could you tell us as of the current—and made commitments to that body—that the State and your department—you were directly responsible at that point—

MR. THOMAS. Yes, sir.

MR. ALEXANDER. —would be making affirmative commitments through State policy to substantially improve that statistic.

MR. THOMAS. Yes, sir.

MR. ALEXANDER. Could you tell me what the current status of foster care placement is in the State?

MR. THOMAS. I think—I'm not real sure of the precise date of my figures, but I believe that we currently have about 500 Indian children in foster care, and I don't think any more than 100 of them are in Indian foster homes.

If I could continue on this for a moment, please, I am very appreciative of an opportunity to appear before a panel of the Federal Government, because the social services for the Indian people are critical, and I would like for you to know the circumstances the State has been in, primarily because of the action of the Federal Government and Congress.

The monies used for social services are referred to nowadays as Title XX. In 1972 the Federal Government placed a ceiling on those funds. The ceiling for the State of Washington for 1 year was \$41 million. At that approximate time, we were spending at the rate of \$46 or \$47 million. I don't recall exactly. Since 1972 I think the inflation rate has been no less than 24 or 25 percent, and we have not had any additional funds for social services. So we have not only had to handle what we have with rapidly depleting funds because of inflation, but there simply has not been any Federal funding forthcoming to augment any State dollars to expand social services and child welfare services for Indians.

At the present time, we have under consideration an application to HEW for a small grant to develop child-placing capacity in approximately five additional Indian tribes. I have forgotten, but I believe only two or three tribes have their own ability to recruit foster homes and make their own child placement now.

You are referring to my commitment. It was made sincerely. We have to have some money to do this.

CHAIRMAN FLEMMING. On this particular point, you indicate your allocation under Title XX is \$41 million?

MR. THOMAS. That is an annual amount.

CHAIRMAN FLEMMING. In your judgment, are the members of the American Indian community receiving their fair share of the total of \$41 million in terms of services that are financed under Title XX?

I recognize the problem as far as the ceiling on Title XX is concerned, but I feel under Title VI of the Civil Rights Act that whatever the ceiling may be, there is an obligation resting on State government to make sure that those funds are distributed in such a manner that in this particular instance, for example, the members of the American Indian community are receiving their fair share of that total amount, whatever the total may be.

MR. THOMAS. Mr. Flemming, I'm going to answer that question and say probably slightly more than their share, but I'm not particularly proud of it. In the distribution of the social service funds, like most of our programs, we consider the Indian people are citizens of the State, and we try to deliver services within the recognition of their unique circumstances concerning their resources. Let me say why probably more than their share. They represent only about 1.8 percent of the State's population. Those figures vary. The last I checked, they're consuming 11 percent of the State's alcoholism services. I'm not going to say we're doing good by putting out that much money. I'm saying, unfortunately, the demand is maybe slightly more than their proportional share.

On the other hand, I want to make it very clear that I'm not saying that they're getting adequate funds.

Part of the difficulty in trying to provide Title XX funds to an individual Indian tribe or to an individual Indian reservation is that it's put out on a per-capita basis. It's a formula population distribution, and not very many of the tribes are large enough to fully support their own programs if we simply gave them their proportional share.

It would be very difficult to provide a full array of services, even on a reservation as large as the Yakima or the Colville, if you want to try to fund full mental health, alcoholism, aging, child welfare, protective services for children is very difficult, with simply an equitable distribution of the Title XX funds.

CHAIRMAN FLEMMING. In the delivery of the services, you are dependent on the operation of the local government?

MR. THOMAS. Yes, sir.

In this State, the community mental health programs, the programs for the mentally retarded, the alcoholism, and to some degree, aging—aging varies slightly. It can be county government. But those programs are primarily administered through county boards.

CHAIRMAN FLEMMING. Do you feel that, taking the State as a whole—and I appreciate I'm asking for a generalization for which there can be exception, but those who are directly responsible for delivering the services are delivering them in such a manner as not to discriminate against members of the American Indian community?

MR. THOMAS. I would say that that varies by program, and for the most part, I will say yes. Obviously, there have been some incidents or instances where some staff have not shown the sensitivity or the understanding that we as a department plan to hold out as our delivery mechanism, but I would say as a whole, we try.

CHAIRMAN FLEMMING. Do you monitor the situation in order to determine whether or not it is being distributed in a nondiscriminatory manner as far as the American Indians are concerned?

MR. THOMAS. We depend a great deal upon our Indian desk and our regional mechanism with the Indian community workers to monitor and report back to someone, like in my position, when there are violations, and I can say that there are some.

CHAIRMAN FLEMMING. Within the past year or two, you indicate there have been violations. What action do you take when a violation has been established?

MR. THOMAS. Usually, when there is a violation, it is a dandy, if you will forgive me for saying so. We get into some case situations involving different philosophies. The action usually can be attributable to a single employee acting on his own, not under instructions from the supervisor or the administrator. The action they try to take is they investigate, ask for full reports.

Sometimes I'm able to make a decision.

We have an administrative appeal procedure within the department—excuse me—I just answered according to the old job I had 30 days ago. I'm now the end of the administrative appeal. But, as the director of the bureau of social services, which I was until 1 month ago, there was an administrative appeal mechanism where I made an administrative decision, and if that still is not acceptable, it would have gone to the secretary of the department.

CHAIRMAN FLEMMING. Can you identify the case that went through to the secretary, and, if so—

MR. THOMAS. Yes, sir.

CHAIRMAN FLEMMING. If the final conclusion was that there had been discrimination, will you identify the sanction that was imposed?

MR. THOMAS. Excuse me. If I answered in terms of discrimination, I am sorry. I was answering in terms of the carrying out of our—I understood you to ask about the delivery of services under our policy.

I'm saying that we have some situations there—I can't respond from the standpoint of discrimination. I can on policy delivery.

CHAIRMAN FLEMMING. At the moment I'm focusing on Title VI of the Civil Rights Act and the obligations that everyone has who is distributing funds or has responsibility for programs that are financed in whole or in part by the Federal Government, and, more specifically, of course, I'm thinking in terms of the American Indian community. The question I'm really asking is, if, in connection with the monitoring of the delivery of services, you have within the past year, the department has within the past year identified acts of discrimination against the American Indian community, and, if so, what action was taken to bring about a correction?

MR. THOMAS. I am with you now. Of course, I add to the earlier testimony, the affirmative action or minority affairs office of our department, which is separate from the Indian desk, and I cannot personally recall any reports, and I have only been in a position to know the total department in the last 30 days, I'm not aware of a discrimination charge.

CHAIRMAN FLEMMING. Would you be willing to consult with your civil rights office, whatever term, whatever label may be attached to it, and ask whether or not, during the last, let's say, the last 2 years, there have been allegations of discrimination against American Indians in the delivery of services?

MR. THOMAS. Yes, sir. I will be happy to.

CHAIRMAN FLEMMING. And if such allegations have been made, what disposition was made of those allegations?

MR. THOMAS. Yes, I will.

MR. ALEXANDER. Mr. Thomas, could you clarify something for me?

MR. THOMAS. Yes.

MR. ALEXANDER. The Indian desk has been previously reporting to you in your prior position? Is that correct?

MR. THOMAS. Excuse me just a minute. Yes, sir. It probably sounds like a confusing picture. They reported to me from the standpoint of operations, which means their day-to-day activity—their timekeeping, their leave time, their travel schedules, their reimbursement, their support-type services. They did not report to me for department policy guidance. That came from the secretary of the department. The reason they were assigned to the bureau of social services when I was there was because they probably spend 90 percent or so of their time on those particular programs.

CHAIRMAN FLEMMING. As I understand it now, the Indian desk, when it carries on monitoring function, it does not monitor in terms of compliance or conformity with Title VI.

MR. THOMAS. That's correct, sir. I made that mistake, yes.

CHAIRMAN FLEMMING. They don't have any obligation along that line at all? In other words, the only office that has responsibilities along that line is the civil rights office, and program managers and so on do not feel a responsibility for monitoring in connection with this particular issue?

MR. THOMAS. Mr. Flemming, I believe the responsibility rests within what we call our office of minority affairs, which also reports to the secretary, but I can't say that for a certainty.

CHAIRMAN FLEMMING. I would appreciate it if—what I'm driving at is, there has been a tendency to set off the office of civil rights or office of minority affairs and say to them, "Now you have got the responsibility for seeing to it that Title VI of the Civil Rights Act is implemented."

Then the program managers, when asked what they're doing to implement Title VI, say, "Well, we have got an office of minority affairs or an office of civil rights, therefore, we do not have any responsibility." And we feel that that is an incorrect wording of the responsibility that rests on program managers, because when they take the oath of office, they take the oath of office to uphold all of the laws, including Title VI. If there is an office of minority affairs or an office of civil rights, they should give them assistance and help them and so on, but that the line responsibility for the implementation of Title VI rests with the program managers.

MR. THOMAS. I understand. You are correct, and the program divisions of our department all have compliance plans, and they would exercise whatever authority is necessary.

I understood you to ask me who monitored it, the Title VI plan general.

CHAIRMAN FLEMMING. I am—I would like to have it clarified. You can clarify it for the record. I would like to know whether the Indian desk people, as they monitor the operations of the programs affecting the Indian community, feel an obligation to find out whether or not Title VI is being adhered to. Now, if the office of minority affairs feels an obligation to do that, fine, but I'm also interested in whether or not the people who occupy the Indian desk likewise feel that they have got an obligation along that line?

MR. THOMAS. Yes, sir. Something happened a couple of years ago that I'm not familiar with. There used to be all one office—and there was some difficulty of some kind of development. There was representation from all of the tribes. They met with the Governor, the then top officials of the department, which I was not one. They separated the Indian desk from the office of minority affairs. From what I have learned recently in my new assignment, there is some question in the whole area of affirmative action and in compliance and discrimination matters, and that is why I answered tentatively. I'm not real sure what the role of the Indian desk plays in that at this point, but I will clarify it for the committee.

CHAIRMAN FLEMMING. I would like very much to have a policy statement from you and the secretary indicating just what the respective roles are of the office of minority affairs and the Indian desk in terms of monitoring to ascertain whether or not there is adherence to Title VI, and then, of course, that ties in with the

earlier request that, if violations have been identified, what disposition has been made of those particular cases.

Commissioner Freeman, did you have a followup question?

COMMISSIONER FREEMAN. Yes, sir.

Mr. Thomas, I would like to ask if you could tell this Commission the organizational structure of the department and what the response—what the basic responsibility is with respect to the administering of the program? You're the head of the department, and you are responsible for the overall administration of it. Under you, there are how many separate departments and divisions?

Mr. THOMAS. I'm not the head of the department. I'm number two. I'm the deputy.

COMMISSIONER FREEMAN. All right. And in your office, there are how many people? How many employees?

Mr. THOMAS. You mean my personal office? What do you mean? The whole department has 13,000 employees.

COMMISSIONER FREEMAN. 13,000 employees?

Mr. THOMAS. Yes.

COMMISSIONER FREEMAN. This is what I want to get at. The responsibilities of the top level of those 13,000 employees, which divisions are there?

Mr. THOMAS. Amongst the program divisions—

COMMISSIONER FREEMAN. Program divisions.

Mr. THOMAS. —there are vocational rehabilitation.

COMMISSIONER FREEMAN. Let's take vocational rehabilitation. That has a director?

Mr. THOMAS. Yes.

COMMISSIONER FREEMAN. Now, what responsibilities does the director have?

Mr. THOMAS. Under the umbrella concept in human resources in this State, the program directors, or so-called, which would be the director of vocational rehabilitation, has the full responsibility for developing the program policy, the funding, the budgeting, the hiring, the firing of everything connected with the vocational rehabilitation except himself.

COMMISSIONER FREEMAN. That is one. Now, the program policy is developed by the director?

Mr. THOMAS. Yes.

COMMISSIONER FREEMAN. Based upon input from whom?

Mr. THOMAS. In vocational rehabilitation?

COMMISSIONER FREEMAN. Yes.

Mr. THOMAS. I am sorry. I'm not an expert in vocational rehabilitation. When you say "input," I know that—

COMMISSIONER FREEMAN. Actually, what I'm trying to—

Mr. THOMAS. Vocational rehabilitation is funded by 90 percent Federal dollars.

COMMISSIONER FREEMAN. That is the precise amount?

MR. THOMAS. I suspect there is a great deal of input from the Federal Government program policy.

COMMISSIONER FREEMAN. The 90-percent Federal dollar, the program policy, does your office have a breakdown as to, by race and sex of the employees who are responsible for administering the policy?

MR. THOMAS. Yes—in vocational rehabilitation?

COMMISSIONER FREEMAN. Actually, in taking them—we would like this with respect to each one of the divisions, everyone—you say 90-percent Federal funds.

MR. THOMAS. I think you will find that in my report that you have subpoenaed for the department.

COMMISSIONER FREEMAN. Could you just answer the question as to what Indian employment there is at the top?

MR. THOMAS. The top of—

COMMISSIONER FREEMAN. At the administrative level. What are the top—

MR. THOMAS. In vocational and rehabilitation?

CHAIRMAN FLEMMING. To clarify that, I think Commissioner Freeman is asking whether there are American Indians occupying the post of director of the major program units of the department?

COMMISSIONER FREEMAN. That is right—what I call the supervisors and up.

MR. THOMAS. No. The answer is no.

COMMISSIONER FREEMAN. None. Is this true with respect to each division in the department of which you're the deputy secretary?

MR. THOMAS. The program departments are public health, and the answer there is no. The others, the adult prison system, the answer there is no. The vocational rehabilitation, the answer is no. The other one is a community services division, which is the large one, and the answer is no. There are four major program divisions, and they're not headed by Indians.

COMMISSIONER FREEMAN. There are no Indians at the top decision-making level?

MR. THOMAS. No.

COMMISSIONER FREEMAN. Does your department have any program for inservice training or sensitivity as to the needs of the minorities, including the American Indians?

MR. THOMAS. Yes, we do.

COMMISSIONER FREEMAN. Will you describe the program and who participates?

MR. THOMAS. To the best of my ability, I will.

As far as the sensitivity training as such, this started back about 3 to 3-1/2 years ago with somewhat of a major thrust and public meetings and that type of thing, and it continued on with all of our field offices. These were programs prepared and presented by Indians. This is an ongoing thing. The Indian community workers,

the Indian desk, are involved in this sensitivity activity continuously. And in addition—

COMMISSIONER FREEMAN. Are the executives involved?

MR. THOMAS. They were in the beginning, and both members of the Indian desk sit on our executive staff. The executive staff, which is approximately 15 people, meets every Monday morning. Both Indian desks sit with that body.

Our plan for development with minority employees and Indians is referred to as a vertical action program within the department for every program division—program divisions and management divisions—have set aside positions for vertical affirmative action, which means to help promote and advance. It includes opportunities for school, night classes, rotation of job assignments, and to develop broader experience. That is extended across the minority groups, the Indians, women, and the handicapped.

COMMISSIONER FREEMAN. But there is no responsibility to assure that the program officers are allocating the services on the basis of need to the minorities, including the Indians?

MR. THOMAS. Are you taking employees now or services?

COMMISSIONER FREEMAN. The services are allocated by employees, are they not?

MR. THOMAS. Yes.

COMMISSIONER FREEMAN. And if the employee has no sensitivity to the needs of the Indian and is not having any communication with or involvement with the needs of the Indian, then the services—the decisions will not reflect any input as to those needs.

MR. THOMAS. I am sorry. I did not answer it in that way. I answered that we did have the sensitivity training. The vast majority of our staff, I think, are well informed, are understanding, and quite sympathetic with the American Indian situation. We have some employees, like any large organization, that probably aren't.

COMMISSIONER FREEMAN. But you have indicated that there are no Indians on that supervisory staff at the top-level management?

MR. THOMAS. No, there are not, but the two Indian desks are members of the executive staff.

COMMISSIONER FREEMAN. The two Indian desks—you mean the two people?

MR. THOMAS. Yes. I might add that I have tried extensively myself to recruit Indian administrators, without success.

COMMISSIONER FREEMAN. Are you still interested in recruiting Indian administrators?

MR. THOMAS. Absolutely.

COMMISSIONER FREEMAN. Then maybe the people in this hearing room will pass the word around.

MR. THOMAS. I say that with a great deal of comfort, Mrs. Freeman, that we have made an effort to recruit. I have a couple of people on staff right now, one a recent graduate of the School of Public Administration in the University of Washington, who is very

short on experience, that we have placed within the agency. That is exactly the arrangement that we have made. We have not been able to recruit, so we are trying to train and bring up some administration.

COMMISSIONER FREEMAN. One of the reasons for our concern is that where we have found that the monitoring is left solely to the desk, the minority or the EEO [Equal Employment Opportunity] officer, who is in a subordinate position, and the program people who make the daily decisions have no responsibility or sensitivity, that the complaint of the minority, including in this instance, the American Indian, of denial of services is in every instance correct, because the decisions are made on a day-to-day basis, and there is no recognition or even a recognition that there is a need.

CHAIRMAN FLEMMING. I would ask counsel to resume his questioning.

MR. ALEXANDER. I have two brief questions, because the time is running short, one for Mr. Oliver.

We had substantial testimony yesterday afternoon about the superintendent of the Lummi school district, the Lummi students, and the people in the Lummi education department about the Johnson-O'Malley conflict. Were you, as the head of the Johnson-O'Malley program for the State, involved in that conflict, and, if so, in what role?

MR. OLIVER. Yes, sir. I was involved up to a point. I had written a letter to the superintendent, pointing out that we were going to possibly withhold final payment of funds until there was a determination as to whether there was a violation of the contract that existed between the superintendent of public instruction, the school district, and the parent education committee. I did visit with the members of the school board and the newly appointed superintendent and the assistant superintendent, which did not materially affect the situation. There was no resolution at that point.

Subsequently, I was removed—

MR. ALEXANDER. By whom?

MR. OLIVER. I subsequently was removed from taking any action in the situation, and another employee in the EEO staff was dispatched to correct the situation or bring about some agreement between the school district and the parent education committee. From that moment on, I have had no official communication with the situation except for some few friends would call me on the telephone. But I was officially removed from taking any part in the efforts to resolve the situation.

MR. ALEXANDER. What was the official reason given to you?

MR. OLIVER. I have not been told.

MR. ALEXANDER. Who removed you?

MR. OLIVER. The superintendent of public instruction.

MR. ALEXANDER. This is the program that you were primarily responsible for?

MR. OLIVER. Yes, sir.

MR. ALEXANDER. Thank you.

MR. THOMAS, there has been a range of testimony as to what the status of tribal governments are in this system from some of the State officials and very clearly from the tribal officials. I would like you to give us your view of what a tribal government is and what efforts, if any, have been made to involve tribal governments in the delivery systems of social services. We're not talking about individual Indians. We're talking about tribal governments.

MR. THOMAS. All right. If you would excuse me, I have registered late on a point that Mrs. Freeman was making, and what I was trying to respond to you was, in our top staff, when we sat down around the executive conference table—I forget whether it was 16 or 17 people present there—but there are 2 blacks, 1 Filipino, and 2 Indians on that group.

The role—I don't know if I can articulate well on the role of the tribal council. I think this comes from both personal experience and work in the field.

I know we, as a department, if I can borrow a moment from our policy statement, which—I will preface it by saying that we will deliver service with the following factors: recognition of tribal councils as the political governing bodies of the sovereign Indian nation.

MR. ALEXANDER. What efforts have you made with the 20-plus tribes in this State, recognized and unrecognized tribes—

MR. THOMAS. Thirty-six.

MR. ALEXANDER. Thirty-six—what effort has the department made to deliver services through or contract with these tribal government entities?

MR. THOMAS. We have probably 2-1/2 to 3 years ago announced that we would be pleased to contract with any Indian tribe for the delivery of their only social service programs to the extent that we possibly could under the State statutes. That is the broad answer, that is the offer has been made. Of course, it is very difficult to follow up and assist an offer like that if you don't have the dollars to do it with.

So, from that point on, I would have to describe some activities across the department. There are two tribes in the State, the Colvilles and the Indians that operate their own area office on aging—

MR. ALEXANDER. The Colvilles and who?

MR. THOMAS. What did I say?

MR. ALEXANDER. The Indians.

MR. THOMAS. The Yakimas. What did I say?

MR. ALEXANDER. The Indians.

MR. THOMAS. Oh, the Colvilles and the Yakima Indians.

There are five or six tribes that have their own day care programs. I heard testimony that there was only one group home in the State

and that was at the Puyallups. I am under the impression there was another one at the Lower Elwha Tribe.

The Yakima Tribe is operating its own protective services program. We fund the Native American Council for Alcoholism programs.

MR. ALEXANDER. Mr. Thomas, rather than doing this from memory, could you submit for the record, specifically with every tribe in the State, recognized and nonrecognized, and also in terms of urban Indian organizations, what programs you have contracted with those tribes to run and which programs they run?

MR. THOMAS. Yes. You will essentially find that in the document you have subpoenaed.

MR. ALEXANDER. I'm not sure it is that specific, but we will check.

MR. THOMAS. Well, when you—all right. I will let it go at that, because some of the tribes are not landed. When you say, "contract with them," I'm not exactly sure what you mean. We would contract through the urban Indian agencies with the alcoholism council. I'm not sure about the tribal arrangement after it goes from there.

CHAIRMAN FLEMMING. Mr. Oliver, one question I would like to ask: Does the superintendent of public instruction have authority to specify the types of courses that teachers who are now teaching in the public school system should take in connection with their inservice training programs? I will take the next question. Specifically, does he have authority to specify that when teachers participate in inservice training programs, that they should take some work which will give them a better understanding of the American Indian community, the culture, the tribal government, and so forth?

MR. OLIVER. I think the State board of education would have that prerogative if they so choose to make such a requirement. I'm not sure that the superintendent himself has that authority, but through the—

CHAIRMAN FLEMMING. Do you know whether or not the superintendent has ever recommended an action of that kind to the board of public instruction?

MR. OLIVER. The State board of education.

CHAIRMAN FLEMMING. The State board of education. Do you know whether or not he has ever made such a recommendation to the State board of education?

MR. OLIVER. No, sir.

CHAIRMAN FLEMMING. Would you be willing to ascertain whether or not such a recommendation has ever been made, and, if so, what action the State board of education took regarding the recommendation? It's just simply a question of fact.

MR. OLIVER. Yes.

CHAIRMAN FLEMMING. Would you be willing to find out, and, if not, I would suggest that staff—that the staff address a communication to attempt to—

MR. OLIVER. To answer your question, I have tried to bring up the subject on the matter of requiring teachers to have some exposure on Indian culture and history in this State, and there has been no action taken either by the superintendent or by the board or, for that matter, there hasn't been any discussion on it.

CHAIRMAN FLEMMING. Okay, I would then like to have a communication addressed to the superintendent of public instruction asking why action had not been taken on a recommendation of this kind.

MR. ALEXANDER. We will do that. We will be in touch with you, Mr. Oliver.

MR. OLIVER. Thank you.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. I have no questions.

CHAIRMAN FLEMMING. I would just like to say, Mr. Thomas, I think the information that has been requested, some of which obviously is already in the report that you have submitted to us, will give us a feel for this.

But I would just simply like to say that I personally feel that a department such as the department which you serve as a deputy does have an obligation under Title VI of the act to follow through to determine whether or not the services that are supported in whole or in part by the Federal Government are being delivered in such a manner as to be nondiscriminatory as far as minorities are concerned generally, and certainly in this instance as far as the American Indian community is concerned, and anything additional that you can supply us, which would point to steps either taken by the department or contemplated by the department along that line, would be very helpful.

MR. THOMAS. I will familiarize myself with that immediately, rest assured.

CHAIRMAN FLEMMING. Thank you. We appreciate both of you being with us and supplying us with the information that you have supplied and the information that you're going to get for us. Thank you very much.

Counsel will call the next witnesses, please.

MR. SCHWARTZ. Mr. Kenneth Snow, Mr. Timothy Adams, Mr. Larry Rasmussen.

Would you each please remain standing and face the Chairman and be sworn.

[Messrs. Adams, Rasmussen, and Snow were sworn.]

**TESTIMONY OF TIMOTHY ADAMS, TRAILER PARK AND RESTAURANT
OWNER; LARRY F. RASMUSSEN, MOTEL AND TRAILER PARK OWNER;
AND KENNETH SNOW, BUSINESSMAN**

CHAIRMAN FLEMMING. Thank you very much.

MR. SCHWARTZ. Starting with Mr. Snow, would you each please state your full name, address, and occupation for the record?

MR. SNOW. I'm Kenneth Snow. I live in Amanda Park, Washington, Post Office Box 44. I have a business there, the Amanda Park Mercantile.

MR. SCHWARTZ. Thank you, Mr. Snow.

MR. ADAMS?

MR. ADAMS. My name is Timothy Adams. I live in Amanda Park, Route 1, Box 1. I am a trailer park owner—and restaurant.

MR. SCHWARTZ. Mr. Rasmussen?

MR. RASMUSSEN. Larry F. Rasmussen, Box 33, Amanda Park, Washington. I have a motel and trailer park and some other businesses.

MR. SCHWARTZ. Mr. Rasmussen, would you move the microphone a little closer, please.

MR. SNOW, could you please describe the interaction that you have had with the Quinault tribal government?

MR. SNOW. Basically, it was very good up to a point of last June, when at that time, they decided to assert a business tax on all of the businesses within the boundaries of the reservation. We live within the boundaries of the reservation, and our business are within the boundaries. However, we're all on tax-fee land. There is no tribal lands under our jurisdiction.

They set up a meeting in the different areas of businesses within the Quinault boundaries, which are Queets, Taholah, and Amanda Park.

At the meeting in Amanda Park, the businesses in that area—and I included—decided that we didn't think we needed to be taxed any more. We are being taxed from the Federal Government, the State, and the county, which is almost breaking us anyway.

The initial tax that they were going to put onto each business varied quite a bit, depending on how many different types of businesses you had. However, this wasn't the whole thing. This was just barely the starting, a foot in the door so that they would continue on, and they have freely admitted that they would continue on with all of the other taxes that we have in the United States, like income tax, property tax, everything—

MR. SCHWARTZ. Mr. Snow, perhaps it would be helpful if you would describe this particular tax that you're talking about and the way it would affect your particular business, as you understand it.

MR. SNOW. Well, it would be approximately \$500 a year for my particular business, because there are so many different aspects of my business. They tax each thing separately.

I have gasoline. I have soft goods. I have hard goods. I have groceries. Then they tax you for each employee, which, incidentally, according to their agreement, if you have Indian employees, then that tax is cut in half, which is discriminatory in itself. We contend that they're discriminating against us very badly.

MR. SCHWARTZ. Do you know whether this tax is being imposed upon Indian persons living upon the reservation as well as non-Indian persons living on the reservation or businesses?

MR. SNOW. They say it is. They say it is being imposed, yes.

MR. SCHWARTZ. Is it being imposed in a different manner on the Indian business owners, as opposed to the non-Indian business owners?

MR. SNOW. To my knowledge, the only thing would be the employees that would be different, according to their taxation charts.

MR. SCHWARTZ. So, the tax would differ based on whether you had Indian or non-Indian employees, but it would not differ depending on whether you were an Indian or non-Indian business owner? Do I understand you correctly?

MR. SNOW. That is my understanding of it, yes.

MR. SCHWARTZ. What is your objection to or number of objections to the imposition of that tax by the Quinault tribal government?

MR. SNOW. My biggest objection, of course, is taxation without representation. We have no representation whatsoever in the Quinault government. There is no way you can join their tribe or be a part of their council, vote in their system, so, therefore, they're taking away our constitutional rights by having taxation without representation.

MR. SCHWARTZ. Is this the only place where you own a business, this particular area?

MR. SNOW. Yes, it is.

MR. SCHWARTZ. Have you given any thought to the consequences which you would expect to follow if the tax were upheld by a court? I understand you're now in litigation over the imposition of the tax? Is that correct?

MR. SNOW. That's correct.

MR. SCHWARTZ. The case, I realize, has not yet been decided, but, assuming for a moment that the court chose to uphold the imposition of the tribal tax and said that it was a proper exercise of tribal jurisdiction, have you given any thought to what you expect the consequences would be? Is that a matter of concern to you?

MR. SNOW. Yes. I would assume that before too long we would be out of business.

MR. SCHWARTZ. Why do you say that?

MR. SNOW. Well, because, without being able to regulate any government by any people, they can do away with you any time they wish. By being able to tax us, being able to have the say over any of the services that we receive, inspections, any time that they wanted to get rid of us, they could.

And it is their aim to claim back every bit of reservation that was originally theirs before it was sold off as tax-fee land.

MR. SCHWARTZ. We have been discussing the area of taxation so far. Are there other areas where you believe that the Indian tribe or its tribal members in your area are either given special privileges or are receiving special benefits?

MR. SNOW. Well, yes, they are. They're receiving grant after grant from the United States Government to accomplish these things. Some of the things I would agree with 100 percent—in trying to keep the fishing up. Some of the things, I think it is a big waste of Federal money for them to try to duplicate so many things that are available locally as governments.

MR. SCHWARTZ. Mr. Rasmussen, we have heard from the attorney general that Indians in this State, in his opinion, is that they do have some form of what he called supercitizen status. Is that phrase one you would agree with, and, if so, how would you characterize this status that the Indians have in your particular area?

MR. RASMUSSEN. I certainly agree with that. I feel that any groups, individuals, or organizations that receive Federal money, that violates the rights or the constitutional rights of other citizens of the United States, do have some sort of privilege.

MR. SCHWARTZ. Do you feel that your rights are being violated?

MR. RASMUSSEN. Pardon me?

MR. SCHWARTZ. Do you feel that your rights are being violated, as a citizen, a non-Indian resident living within the borders of the reservation?

MR. RASMUSSEN. Yes.

MR. SCHWARTZ. Would you explain to this Commission exactly how you feel your rights are being violated?

MR. RASMUSSEN. I have had on my property—forced inspections with illegal search warrants, and they have gained entry into the trailers within the trailer parks by flashing search warrants to the individuals and also citizens of a foreign country.

MR. SCHWARTZ. When you say they have gained entrance by search warrants, are you familiar with the nature of those warrants and what it is those warrants were supposed to be for?

MR. RASMUSSEN. From what I understand, it was for dye testing and water samples. And they had the Taholah police force there at the time to back up these search warrants, which I consider illegal.

MR. SCHWARTZ. Do you know what governmental function the tribe was at least attempting to exercise with regard to the search warrants issued for your property?

MR. RASMUSSEN. No, I don't.

MR. SCHWARTZ. Could you explain a bit more fully—I think we picked up in the middle of an event that has occurred with regard to you and your interaction with the tribe. I would like a more full explanation for the record of the events and your interaction with the tribe with respect to the assertion of certain zoning jurisdiction, I believe, that pertains to your trailer park.

MR. RASMUSSEN. The actions of the tribe?

MR. SCHWARTZ. Yes. I would like to know the interaction that you have had with regard to the trailer park that you own and occupy on the Indian reservation, what interactions you have had with the tribal government concerning that trailer park.

MR. RASMUSSEN. I don't believe I understand it yet.

MR. SCHWARTZ. At a certain point in time, it is my understanding that the tribe exercised or attempted to exercise jurisdiction over you in some manner, and it's further my understanding that that matter concerned certain health regulations that existed within the tribal code, certain zoning regulations that existed within the tribal code. It is further my understanding that the search warrants had something to do with the exercise of that jurisdiction; that is, it was an attempt at some form of enforcement with regard to those particular regulations.

What I'm asking you is, if you could detail the events that occurred and what it is that the tribe was trying to exercise here, whether it was an attempt to have you conform to the regulations of the tribe, and, if so, what permits or what requirements or what it was that the tribe was asking of you.

MR. RASMUSSEN. The tribe attempted to impose a zoning and taxing authority within the Amanda Park area. They have tried to impose health food inspections, sewage inspection, and tax the trailers, I believe, one-half of 1 percent of the appraised value, and, also, if I remember correctly—it has been so long ago since I read it—that a \$50 fee to each trailer owner for the privilege of parking on the reservation.

MR. SCHWARTZ. Have you offered to pay that fee?

MR. RASMUSSEN. No.

MR. SCHWARTZ. What is the nature of your objection to paying that fee?

MR. RASMUSSEN. Strictly as Mr. Snow stated. We have no voice in the tribal government. Again, we come back to the same thing. We have taxation without any representation whatsoever.

MR. SCHWARTZ. Mr. Adams, what has been the nature of your involvement with the Quinault tribal government?

MR. ADAMS. I have been involved in a group with these people here with the issues that have been raised.

I own a trailer park, and at several times they have come in and distributed pamphlets and this sort of thing that we, you know, went along with some of their tribal doings.

They called me and asked me one time if they could come in and do a survey of how many families we had in there, how many people were in each family. That purpose wasn't given to me, but I guess they wanted to know how many people we had for tax purposes, which I declined to give that opportunity.

I was told by some people in our trailer park—whether this is true—of course, a lot of this is something I can't prove—but I was

told there was a person going through my trailer park without my knowledge and going through the—walking through the back of the trailers, and one of the people in the trailer court asked them what they were doing there. They said they were looking for the owner.

They said, "Well, you are not going to find him in the back of the trailers. His office is on the hill."

I was never approached by that person.

MR. SCHWARTZ. Excuse me, Mr. Adams. Could you move the microphone a little bit closer to you.

MR. ADAMS, were you offered any opportunity to provide any input to the tribal government at some point during the development of the business and occupation tax that has been levied on your business?

MR. ADAMS. No.

MR. SCHWARTZ. Mr. Rasmussen?

MR. RASMUSSEN. No.

MR. SCHWARTZ. Mr. Snow?

MR. SNOW. Not to offer any input. They had it all spelled out at their meeting.

MR. SCHWARTZ. When was this meeting?

MR. SNOW. I can't recall the correct date or the exact date, but it was in June.

MR. SCHWARTZ. Was it before the tax was actually imposed upon you?

MR. SNOW. The tax was originally supposed to go into effect July 1.

MR. SCHWARTZ. What was the purpose of this meeting? Were you informed?

MR. SNOW. To inform us of the tax and what it involved.

MR. SCHWARTZ. Mr. Adams, I understand that you grew up in the area of the Quinault Reservation, if not on the Quinault Reservation? Is that correct?

MR. ADAMS. Yes.

MR. SCHWARTZ. Did you attend public schools in the area?

MR. ADAMS. Lake Quinault High School all my life. I have lived almost all of my life there, except 2 years.

MR. SCHWARTZ. I would be interested in knowing what courses or what subjects you took which involved any explanation of rights or relative rights and responsibilities that Indians and non-Indians living on the reservation or which gave you an understanding of tribal government or which studied tribes and tribal governments in any manner?

MR. ADAMS. None whatsoever.

MR. SCHWARTZ. There was none whatsoever.

What is your understanding of the relative rights and responsibilities of Quinault Indian tribal members versus non-Indian citizens who happen to be living on the reservation?

MR. ADAMS. Say that again, please.

MR. SCHWARTZ. I'm curious to know whether you think that there are differences between the treatment offered by any government or offered by the Quinault tribal government, if there are differences that exist between the treatment offered to Quinault tribal members living on the reservation and non-Indians living within the reservation boundaries, like yourself.

MR. ADAMS. The grants that they receive are for their tribe, such as alcoholism programs, this sort of thing, on the reservation; the money that is brought in from Federal funding is not given any consideration to us, living on the reservation. I think it is for the tribe, not the whites that are living within the reservation boundaries.

MR. SCHWARTZ. So you're saying you are not receiving any direct services from the tribal government?

MR. ADAMS. No.

MR. SCHWARTZ. Are there any special tax benefits that members of the tribe receive that you know of, as opposed to the taxation that applies to you?

MR. ADAMS. I'm not completely familiar with that, no.

MR. SCHWARTZ. Mr. Snow, could you answer that question?

MR. SNOW. Would you rephrase that, please?

MR. SCHWARTZ. I was interested to know, is your belief that the members of the Quinault Indian tribe are receiving any special tax benefits other than the business and occupation tax which we discussed before? I'm talking about the Federal and State tax benefits that non-Indians living on a reservation don't receive, and, if so, what they are.

MR. SNOW. Well, it's my understanding they don't pay near the taxes we do, as far as income tax on their different lands or any of the State taxes and county taxes.

MR. SCHWARTZ. Federal taxes?

MR. SNOW. I don't believe that the Indians pay any Federal taxes. It depends on their status, what the status of their land is, whether they're an allottee or what their land falls under.

MR. SCHWARTZ. Thank you, Mr. Snow. I have no further questions.

CHAIRMAN FLEMMING. I would just like to ask you a couple of questions. First of all, it is my understanding from reading the record and listening to your testimony that when you acquired property on the reservation, you were aware of the fact that you were acquiring property related to the Indian reservation. Is that true as far as all three members of the panel are concerned?

MR. SNOW. Not as such, no. When I purchased that land, I purchased that as tax-free land and with no jurisdictions from the Indians.

CHAIRMAN FLEMMING. Did you understand at that time that the land was a part of the Indian reservation?

MR. SNOW. I understood that it was within the boundaries of the reservation, but not under their jurisdiction.

CHAIRMAN FLEMMING. Why—the latter—who indicated that it was not under their jurisdiction? Where did that information come from? From a public official?

MR. SNOW. Well, yes. We pay taxes to the State and the county, so it is under their jurisdiction.

CHAIRMAN FLEMMING. What I am driving at here, you said that you knew you were acquiring land that was on the Indian reservation, but it was your understanding that it was not subject to the jurisdiction of the tribe, the tribal government?

MR. SNOW. That's correct.

CHAIRMAN FLEMMING. Where did that understanding come from? Who gave you that assurance?

MR. SNOW. Well, I would say common knowledge and common talk from the people I bought it from, which was 5 years ago, and the knowledge that we're paying all of the taxes.

CHAIRMAN FLEMMING. Did you have the opportunity of talking with anyone who had an understanding of tribal government and what tribal government could mean under the treaties and so on?

MR. SNOW. No, sir.

CHAIRMAN FLEMMING. The information you picked up was just simply general information prevailing in the community at that time?

MR. SNOW. Yes. The person I purchased this from had it 35 years when I purchased it from him. I have had it 5 years. That is 40 years. That is a long time. He purchased it from someone else that had it, I don't know how many years, from there. Being a real old business and never being bothered by the tribe, naturally, I think you would assume that there would be no harassment.

CHAIRMAN FLEMMING. Mr. Adams, you understand that the land that you are now occupying was on the reservation?

MR. ADAMS. Definitely.

CHAIRMAN FLEMMING. I gather from another response to another question, you were not at that time familiar with tribal government and with the rights under the treaties and so on?

MR. ADAMS. No. I didn't realize that they had jurisdiction and the rights and powers that they did over the fee-patent landowners and this sort of thing. I just purchased it the first of the year.

CHAIRMAN FLEMMING. You didn't make any inquiries as to the authority of the tribal government?

MR. ADAMS. No, I did not.

CHAIRMAN FLEMMING. Mr. Rasmussen, is that the situation as far as you're concerned, also?

MR. RASMUSSEN. No. I had no idea at the time that I was even buying property within the reservation boundaries.

CHAIRMAN FLEMMING. Could I ask there, did you purchase from a previous owner?

MR. RASMUSSEN. Yes, I did.

CHAIRMAN FLEMMING. Was there someone—did someone search the title and so on?

MR. RASMUSSEN. I have a guaranteed title with no encumbrances.

CHAIRMAN FLEMMING. And in connection with the search, no one identified the fact that this property was on the Indian reservation?

MR. RASMUSSEN. No, sir.

CHAIRMAN FLEMMING. I gather that you also up to now have not been acquainted with the tribal government concept of the rights that may arise under the treaties and so on?

MR. RASMUSSEN. No. Up until a short time ago, I became aware of it.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Gentlemen, as a lawyer, I have had a number of cases involving titles and also the fact that the lawyer doesn't get such cases unless there is a problem. And in some instances there have been conveyances that were defective. Persons in some instances—the property was owned by two or three people and only two people signed the deed, and the property owner was not aware. However, even with the title policy, all the title policy guarantees is that if you have to lose this property to a proper owner, then we will compensate you.

Now, I would be very interested for each of you, it seems to me, to go back and actually read the legal description in that deed, because I would anticipate that probably even in looking at the deed that you have missed some very important point. Some people have, you know, jokingly said, "Well, he will even buy the Brooklyn Bridge." Sometimes people have actually bought the Brooklyn Bridge.

What I am saying is that if the property which you bought was subject to a prior claim, and that claim was not validly conveyed to you, then there is a cloud on your ownership.

Then there is another point here, and that is, each of you is involved in business, and the community, the city, and sometimes the county exercises a right to regulate that business. Mr. Snow is protesting a merchants' tax, which, if it were in Seattle, you probably would have paid that merchants' tax very quickly and written it off as a business expense and gone onto the next item.

The other two of you operate a trailer court. In every—in certain communities, there is even a restriction, and the use of a trailer court or the maintenance of a trailer court within certain limits of certain subdivisions is prohibited. In other instances, they're absolutely licensed, and they're regulated for health purposes, because perhaps maybe the sewer requirements or something are not being met.

What I'm saying to you is that the tribe as a sovereign, and whether you recognize it or not does not depend on whether it is—it is whether it is actually in law or not—it does have certain

responsibilities and certain powers to regulate for the public health, for the public welfare.

In many instances, tribal courts—I mean trailer courts—have to be regulated to determine whether the water needs to be checked or not. This is something that, again, if it were a trailer court operating in a suburban area outside of a reservation would have been probably the inspector would come, you know that the inspector is coming. The cooperation is made with this inspector. Again, if there is any finding that a correction needs to be made, the correction is made. You accept the responsibility. You accept the fact that it has a power to regulate. It is in the public welfare to do it.

I'm asking you, have you ever considered that probably there are these dimensions that need to be recognized now that you have not previously recognized?

MR. SNOW. Commissioner Freeman, I think the whole thing here is that we're going back to the same thing. We still have all of these from the county. We're paying county taxes. We're receiving all of these services and all of these inspections from Grays Harbor County.

COMMISSIONER FREEMAN. That does not mean that if you happen to be in another subdivision, that that subdivision does not have certain powers. I live in a city—I live in a county—I also live in a private subdivision that has made an extra assessment on the people who live there. We have to pay it.

MR. SNOW. That's correct, Commissioner Freeman, except for one important point. Wherever you live, whatever you do, or what taxes you pay, you still have a voice in that government by your vote in that community you live in. We do not.

MR. ADAMS. May I add one thing? We asked, when the tax—we had a meeting. The community met with members of the tribal council. We asked several questions. We asked, what is going to be done with the money? Will we receive any services for the money? Will we have any voice in the distribution? We have no representation. We have no vote. So we have no control over what is done with the funds. What is going to be done with the money?

I think that if it was went about in a manner for the benefit of all, which it might be, or it might not be, but we seem to—we could not get an answer to those questions. What would be done with the money?

We said, "What is it going to be used for?"

The answer to that question that I posed was, "Well, in any government, you can always use the money." That was the answer.

Now, so many things like that, that we have asked, you know—we would like to be represented, if we're going to be taxed. We would like to have a say in what is done with the money and represented by our dollars. If we're going to be giving dollars for something, we would also like to be represented in the distribution of these dollars, which we're not.

One question that seems to be a real issue is, do they have the power to tax us?

COMMISSIONER FREEMAN. But that is being litigated, so the point is that that is not one that we would—in other words, you have already said that if it is determined that they have the power to tax you, that you will have to deal with that at the time of the decision. We're not—I'm saying if we assume that there is a body that has the power to tax, then whether you—people do not necessarily like taxes, but there are all kinds of taxes that are paid—the license, because you have the license to do business, you buy a license, and sometimes, because of the nature of your business, you have to pay an additional kind of tax. But you receive a benefit. You're in business. You are not insolvent. You are not bankrupt. You have employees. You are receiving—you are selling goods or something. You have income, and you are benefiting. What I'm saying to you is that you are probably not recognizing that you are receiving benefits from being on the Quinault Reservation; otherwise, you wouldn't be there.

MR. SNOW. I will have to agree 100 percent with you there. That is true. If I couldn't run a business there, I wouldn't be there.

CHAIRMAN FLEMMING. Are there any direct services that you receive from the tribal government, any services at all? You don't recognize any services that you receive from the tribal government?

MR. SNOW. No.

CHAIRMAN FLEMMING. Did you have a question?

MR. NUNEZ. I have two questions, to clarify the issue. Is it the problem that the tribe had not taxed you until very recently—you have been there for, you have indicated, for 5 years, and your family for a considerable amount of time. Up to now, you have not been taxed. The issue has arisen in the last year or so?

MR. ADAMS. Yes.

MR. NUNEZ. That is one issue. -

The other issue is, I think you were getting at the point that, theoretically, if the tribe would allow you to have some say over the distribution of the funds that were being—the taxable income—would you then feel differently about the issue if you were given the opportunity to participate in the decision to spend the funds that they will tax you for? Will you feel differently at that point? I'm asking you—I believe all of you have the same problem.

MR. ADAMS. I definitely think, yes, it has to make a difference, quite a bit of difference. Like I say, when you have somebody that is governing you, you would like to have representation or a say in what's going on about you. You don't want to be herded around like cattle with no say in what is happening to you or what is being done to you.

One question that was raised that I think should be brought up here—we asked what is to keep the tribal government from raising the taxes unreasonably to where that we could not pay them, and one—we have to pose this question in a hypothetical sense—if the

taxes were raised to an unreasonable amount that drove us out of business, after we were out of business, the land could then be regained, and the laws and the taxing system could be reevaluated and changed after the land had been regained, which is a definite possibility, as far as I can see.

Now, I asked a member of the tribal council what would prevent that from happening. His response was, "I wouldn't let that happen."

I said, "Can you prevent that?"

Well, I know that he personally cannot. We had no personal guarantee. So we felt our livelihood was threatened, and, thus, we had to do something about it. For someone to tell me differently, I would like to see some proof.

CHAIRMAN FLEMMING. We appreciate all three members of the panel being with us and sharing with us your views on this issue. Thank you very, very much.

Counsel will call the next witnesses.

MR. BACA. Justine James, Goldie Denney, Roland A. Youmans, Harold C. Sumpter.

CHAIRMAN FLEMMING. Those who are to testify will please stand and raise your right hands.

[Ms. Denney and Messrs. James, Sumpter, and Youmans were sworn.]

TESTIMONY OF GOLDIE DENNEY, DIRECTOR, QUINAULT NATION'S SOCIAL SERVICES; JUSTINE JAMES, VICE CHAIRMAN, QUINAULT TRIBAL COUNCIL; HAROLD SUMPTER, SHERIFF, GRAYS HARBOR COUNTY; AND ROLAND YOUMANS, COMMISSIONER, GRAYS HARBOR COUNTY

CHAIRMAN FLEMMING. Thank you for being here.

I understand that you have an attorney accompanying you. I would appreciate your giving us your name.

MR. LEWIS. Yes, Mr. Chairman. My name is Doug Lewis. I am a deputy prosecuting attorney for Grays Harbor County. Our agency represents both the sheriff and the county commissioners. They have requested that I accompany them here today. I am here in that capacity.

MR. BACA. Could each of you, beginning with Mr. James, identify yourself, give your tribal affiliation, if any, and your address, please?

MR. JAMES. I'm Justine James, vice chairman of the Quinault Tribal Council, Taholah, Washington, Box 1137.

MS. DENNEY. My name is Goldie Denney. I'm director of social services for the Quinault Nation, and my address is Post Office Box 14, Pacific Beach, Washington.

MR. SUMPTER. My name is Harold Sumpter. I'm the sheriff of Grays Harbor County, located in Montesano, Washington, county seat.

MR. YOUMANS. My name is Roland Youmans, Grays Harbor County commissioner, district 3—resident of Hoquiam, Washington.

MR. BACA. Beginning with you, Mr. James, how long have the Quinalts been in the Olympic Peninsula area?

MR. JAMES. Well, ever since we have been around, I imagine. We have been under the treaty since 1855.

MR. BACA. That has been reservation land since 1855?

MR. JAMES. Yes.

MR. BACA. Would you describe the structure of the Quinault government, please?

MR. JAMES. The Quinault government has a constitution, which was adopted 5 years ago, which governed the tribal council and the procedures on how elections are to go and how the government is to run by this constitution—it was revised from 1922.

MR. BACA. There was a previous constitution?

MR. JAMES. There was bylaws and a constitution, yes, sir. There is an annual meeting, which elects the tribal council, which elects 11 members—the chairman, vice chairman, the secretary, and the treasurer, who are the executive council for the business committee. Also there are seven council members, which constitutes a quorum. There are five of these councilpersons and the chairman or the vice chairman.

MR. BACA. Could you tell me what services the tribe provides to the members of the tribe?

MR. JAMES. We provide all services for the tribe, as any other government would provide.

MR. BACA. Could you enumerate some of those, please?

MR. JAMES. Yes. We have a social service program. We have a law enforcement program, which consists of 10 different programs, which were consolidated into one unit for better services. We have fire engines, ambulance, health clinic, fisheries, forestry—we have a large forestry staff.

MR. BACA. Are any or all of those services available to nonmembers or to people who live on the reservation who are not members of the tribe?

MR. JAMES. Yes, they are. They're all open. There is no closed discrimination, I guess you would say.

We have many nonmembers living within the communities that share within these programs or within these services. They share their knowledge to help provide a better service. I think one thing I'd like to point out here is that we have roughly about 170 employees working for the Quinault Tribe, and about 30 percent of these are non-Indians.

MR. BACA. At this point, I would like to ask you a question based on previous testimony. We have just heard the last panel say that there were no services available to them as non-Indian residents on the reservation directly from the tribe. Is that accurate?

MR. JAMES. No, it isn't accurate. I don't believe it is accurate, because we have our policemen and our commissioned officers, both county and tribal. They're in the area and throughout the area daily.

MR. BACA. Is fire protection available?

MR. JAMES. Amanda Park has their own fire district.

MR. BACA. I would like to ask you about one other aspect of the tribe's operations, and that is its fishing operations. Could you describe those, please?

MR. JAMES. Our fishing operations are done by tribal members. They have to be one-quarter-degree blood to exercise their tribal fishing. There is a very limited entry of receiving permits for your spouses. A nonmember or non-Indian can participate as long as his wife is with him. We have roughly, I would say, in the neighborhood of 175 fishermen, both on and off reservation.

MR. BACA. Does the tribe have and maintain statistics on the number and percentage of salmon and steelhead catches since the decision in *U.S. v. Washington*?

MR. JAMES. The tribe has always had these documentations. We came up with better documentation, I believe, than anybody in the Boldt case.

MR. BACA. How were you able to do that?

MR. JAMES. Over the years, we have kept very accurate records, and in 19—I believe it was '22—we filed suit against the Federal Government for the way they were handling our fisheries. I think it was around 1917, and the suit was finally heard in '22, which the Quinault Tribe retained sole jurisdiction over its fisheries without input from the Federal Government.

MR. BACA. In other words, you control the natural resources of the tribe?

MR. JAMES. Of fisheries.

MR. BACA. Of the fisheries?

MR. JAMES. Yes.

MR. BACA. Not the forest?

MR. JAMES. No. The forest was under the Bureau of Indian Affairs. Five years ago we went into an extensive forest program. This program consists of close to \$2 million right now that we handle to bring a better reforestry product back, which includes your land base. This is all computerized.

MR. BACA. The fisheries aspect and the forestry aspects of your operations are computerized?

MR. JAMES. Yes, they are.

MR. BACA. Could you describe that, please?

MR. JAMES. The daily data is taken off and read into a computer.

MR. BACA. For what purpose?

MR. JAMES. Well, Boldt requires that. It is instant information for that. We have many problems within our forestry program, and if

we had to use the paperwork filing system to do it, it would be impossible. That is why we computerized it.

MR. BACA. This may not be a fair question, but I ask you if you can make any comparison to the way the resources of the tribe are being managed now that they're under tribal control, as opposed to the way they were when they were under the various agencies of the Federal Government directly?

MR. JAMES. Yes. We have—we had filed seven suits against the Bureau for mismanagements.

Since that time, we have taken a direct program on forestry, and we have, I think, better cooperation with logging companies because we work on a day-to-day level with them. We have problems with them, sure. We also have problems that the Bureau initiates by some of the rules and regulations we come up with. They possibly don't agree with it.

Overall, we have, I think, in our forestry staff in the neighborhood of 80-some people working there. Many of these are highly technical people.

MR. BACA. Mr. James, the previous panel referred specifically to, I think it was called, the business or operations tax that was proposed by the tribe last January. Could you tell us the purpose of the tax and what the resources or the revenues came from the tax are going to be used for?

MR. JAMES. Yes. As looking down the road to the grant economy, which we run on, and I will give you a little history on that—in 1960 our tribal government was ran on \$3,600 a year. Today, through the granting program, we're running on in the neighborhood of \$6.5 million annually.

Realizing that these granting programs are going to run out, we have to build a resource to carry programs, not maybe in full strength, but skeleton programs. Taxation has been no new thing to the Quinault people. Our fishermen have paid taxes throughout the years. In 1960 they paid a 1-cent tax per pound of fish.

MR. BACA. To what government did they pay that?

MR. JAMES. The tribal government, which went to pay for the steelhead case that we went against the State of Washington in 1962.

MR. BACA. While we're on that subject, we have also heard at various times that tribal peoples in Washington are exempt from certain taxes that other citizens of the United States are asked to pay. Is that correct?

MR. JAMES. No, it isn't. In our tribal payroll, we pay the same taxes as every other individual in the State of Washington or in the United States.

One step further, I think, that many people don't realize or maybe never understood is that 10 percent of all our taxes or 10 percent of all our monies coming off our allotments have returned to the U.S. Treasury, and, as Mr. Adams, who, I think, has been a timber feller on our reservation, and the people that were on the panel know the

value of that timber, and that money has always returned to the U.S. Treasury until about a year ago. The tribe went after it. We never got it all, but we got a percentage of it.

MR. BACA. Could you tell us also about what efforts the tribe has made in the area of zoning?

CHAIRMAN FLEMMING. I don't think we got a complete answer to the question as to the reason for the tax and the plans for utilizing the revenue.

MR. BACA. I am sorry. You are right, Mr. Chairman.

MR. JAMES. I can give you a copy of the taxes that we have.

MR. BACA. The purpose of the tax, though, was to provide funds for the continuation of programs, once grants began to discontinue. What was the present purpose for which those revenues would be used, since you presently have grants?

MR. JAMES. Realizing that we have within our constitution a taxing power—like I said, we were looking down the road a few years—to this point, there has been no set disposition of how these taxes are going to be spent.

MR. BACA. Would persons who are not members of the tribe be allowed or afforded an opportunity to have an input into how those funds are used?

MR. JAMES. I would say yes, but I would also state that there is no way that they could participate in the tribal government, because to participate in our tribal government, you have to be one-fourth Indian. The ways of the expenditures for the money probably could be worked out with them.

MR. BACA. You would be willing to afford them that opportunity?

MR. JAMES. We would be willing to afford them the opportunity if the attitudes, too—the government would probably work together, you know.

MR. BACA. I am sorry. I don't understand that last answer.

MR. JAMES. I guess what I'm trying to say is, you know, which there will be court cases, no doubt, and hopefully that will reduce the reaction of suddenly getting a tax put onto them and realize down the road further that we have the taxing power within the boundaries of the Quinault Indian Reservation. We have many authorities that I don't believe the non-Indian really recognizes or wants to recognize.

MR. BACA. Along that line, Mr. Youmans, what is the county's position with regard to the broad jurisdictional authority asserted by the tribe?

MR. YOUMANS. We have an opinion from the prosecutor that indicates Grays Harbor County does have jurisdiction over white ownership. However, at this point in time, there obviously has been a problem arise to make any particular challenges from either side.

MR. BACA. I am sorry. The response was that the county prosecutor's office—

MR. YOUMANS. Would you restate your question, please?

MR. BACA. My question was what position the county had taken with regard to assertion of a authority by the tribe?

MR. YOUMANS. No position.

MR. BACA. The county has no official position?

MR. YOUMANS. No official position.

MR. BACA. From the county's point of view, how is the Quinault tribal government viewed?

MR. YOUMANS. Well, the tribal government is viewed exactly the same way as any other entity in Grays Harbor County—Hoquiam, Aberdeen, Cosmopolis, Elma Indian Nation—they're all viewed the same way. They have their own governments within the boundaries of their jurisdiction, within the city limits, for example—the same within the tribal boundary. Our contacts with the tribal government would be exactly the same as it would be with any city within Grays Harbor County.

MR. BACA. Are there formal mechanisms by which you relate, meet with, and discuss issues of common concern with the tribal council?

MR. YOUMANS. We do look upon the Grays Harbor County's commissioners' meeting as being the parent meeting, if you will, in Grays Harbor County. It meets every Monday. Every citizen in Grays Harbor County or anyplace else has the opportunity to appear.

Most of the day-to-day relationships that we would have with any entity at Grays Harbor County usually is a misunderstanding on something, a phone call—"Hey, Joe what happened here?"

It is discussed, and the answer is, "It is taken care of."

It is very seldom on a strictly formal basis of a letter coming into the commission with a problem or with a complaint. I don't want to indicate that we haven't received these. The normal day-to-day operation is handled that way.

MR. BACA. What specific services does the county provide to the tribal reservation and to its members?

MR. YOUMANS. The services that the county provides to the reservation area would be the same as is afforded to other noncity areas within Grays Harbor County. There is the Grays Harbor-Pacific County Health Department, which covers the area.

The sheriff, the law enforcement, covers the area. There are intergovernmental agreements in this particular instance between the tribe and Grays Harbor County for the furnishing of ambulance service. We have the same kind of agreement with cities to take care of the areas that are normally covered under their jurisdiction to pay them to cover the uncovered areas. It is rather difficult to relate.

Zoning, engineering, health—it is exactly the same assistance given there as you'd find in any other county. It's normal county functions.

MR. BACA. Miss Denney, in introducing yourself to the panel, you described yourself as a director of the social services for the tribe?

Ms. DENNEY. That's correct.

MR. BACA. Could you elaborate on what that means, what kind of services the tribe provides for its members?

Ms. DENNEY. Well, to give some of the background of how it has developed, it is that the Quinault Tribe is so geographically isolated that the village of Taholah is 45 miles from the nearest resources available to urban people, and the village of Queets is approximately 70-some miles from the nearest department of social and health services or the county juvenile services. We overlap into the two counties, Grays Harbor and Jefferson and Clallam County.

Services were not being provided on the reservation, juvenile services or any Title XX services, and the services that were being provided were of the negative nature. The Quinault people suffered the loss of many, many children through illegal removal, adoptions, and the same types of things that have happened that have been testified to in previous testimony.

As a result of this, the Quinault Tribe had the foresight to attempt to deliver some of its own services to its own people. I'm the director of this program, and we're using—all my staff are Quinault people, paraprofessional Indian social workers that I have personally trained and have received extensive training, and we have a fully operating staff that provide all of the Title XX services on the reservation.

Mr. Thomas' statement that Indian people are getting their share of the Title XX services is probably due to the fact that casework staff are in contact with us in cases of adoption, foster care, and child protective services, so we go out and provide the services.

They contact us primarily by telephone, and we do the work. We document it. We send the material, the case summaries, and this sort of thing, into the local department of social and health services, and then they put it in their case record, and so it goes in their printouts every month that they have provided so many cases—Indian child protective services cases, so many foster care cases, so many adoptions, etc.

Actually all of the services are provided by Quinault people themselves and not provided directly by the department of social and health service staff.

MR. BACA. Which would be a county operation?

Ms. DENNEY. Yes. Well, this is a local office. The local office is what I'm referring to.

This is why, not only Quinault people, but Indians throughout the United States, have taken a pretty firm stand on how this problem can be resolved, and the main problem, the basis of all this, is the funding mechanism. All social service funding—States are the only recipients to provide the services that this money is allocated for.

So, Title XX funding and Title IV(b) funding, all of the funding for any types of services, are funded directly to the States, and then those services never filter out to the Indian people who are isolated,

who are in the head count when these funds are allocated, but we do not receive those services. So the only solution to this is for direct funding to the Indian tribes themselves.

MR. BACA. Let me understand then. Does the county or the State provide funds for the services that you're giving on the reservation?

MS. DENNEY. No, they do not.

MR. BACA. What is the source of those funds?

MS. DENNEY. Federal grants.

MR. BACA. Thank you.

The Quinault are presently exercising governmental authority within the boundaries. Would the tribe receive better and more services in your opinion if the tribe was dissolved and the members become mere citizens of Grays Harbor County?

MR. JAMES. In the first place, we don't intend to be dissolved.

MR. BACA. I understand that. I'm asking you a hypothetical question.

MR. JAMES. No. In the past, in 1958 when we went under State jurisdiction, the Quinault Tribe didn't receive any services at all from the county or the State, so it's due to that experience. We don't feel that we could receive any better services than we're providing right now.

MR. BACA. Thank you.

This next question, both to Mr. James and to Mr. Sumpter, if you would, is there a cooperation between the tribal government and the county government in the area of police protection, and, if so, how has that worked out?

MR. JAMES. On a day-to-day basis, say the staff people, the law enforcement officers, on a day-to-day basis, the communication and the working relationship is there, but above that level, we feel in the Quinault Tribe that it isn't there.

MR. BACA. I am sorry. I don't understand. What is missing, in your opinion?

MR. JAMES. Oh, I would say lack of—maybe it's political pressures. I couldn't really put my finger on what it is. I think that—

MR. BACA. Sheriff Sumpter, could you comment on the nature of the relationship in the area of law enforcement between the tribal government and the county government?

MR. SUMPTER. I feel it works pretty well and certainly better than it has in the past in Grays Harbor County, inasmuch as we work together totally. The tribe received a grant some years ago and established a repeater radio tower, which enables us to have communications throughout the entire Grays Harbor County, where, before, it was very sketchy and spotty. We now—the situation being we have an east repeater on Minot and one at Neilton.

The Indian police utilize my frequency, my radio. They buy their own radios, but it is my frequency. So we can communicate and respond to mainly—cedar theft is a big thing, one of the big things.

The theft occurs on the reservation. He is headed out to parts unknown. We can apprehend and seize.

There are many other things. Not long ago there was an Indian policeman in the village of Taholah who in the early morning hours was shot at. You might say that he was even hit, inasmuch as he was wounded in the back of the neck, through the shield of his patrol car.

There again, even though the distance is some way away, the closest car being in the Moclips-Pacific Beach area, several of our officers, including myself, responded to that and conducted the investigation.

MR. BACA. Was that by prior arrangement? Was there a technical, mutual backup agreement between the tribal police and the county police?

MR. SUMPTER. Yes. For years, we have helped one another and had no problem with this. The only problem we have had mutually is the lack of manpower on both parts.

MR. BACA. Is there any other way in which the police departments or law enforcement agencies have cooperated officially?

MR. SUMPTER. Yes—I don't understand what Mr. James is—was, I felt, reluctant to divulge to us here, because I thought everything was really kind of super, because I have all of their qualified people cross-commissioned.

MR. BACA. Could you explain that term, please?

MR. SUMPTER. In other words, I have given them my special commission as police officers, so that outside of their jurisdiction or whatever, if necessary, to cite a person into our courts, if there be a problem, in order to simplify it, I say, "Okay, you are outside of the reservation or on the highway. You write a traffic citation for a violation you see occur and cite them into our justice court." Therefore, it keeps the problem down of this dispute of who has authority and what jurisdictional authority.

MR. BACA. Is the opposite true, too? That is, are members of your force deputized—on the reservation?

MR. SUMPTER. No. They're deputized—I have about, I believe, seven or thereabouts, including myself, who just have a BIA commission, which would get into that deal. I might say that none of us have ever been into Federal court on an arrest. That is the only thing.

MR. BACA. In your opinion then, the relationship between the two law enforcement agencies is good?

MR. SUMPTER. Yes. We have cooperation. They're able to train their people by sending them to the law and justice schools that we have in the State of Washington.

I'm also able to train mine. They go to the same school at St. Martin's College or the Seattle Police Academy for the 11-weeks' training course. We have had an extension program the last 3 years jointly, in getting our people to these schools so they can be trained to be certified police officers in the State of Washington.

MR. BACA. Mr. Youmans, are there any other examples you can give us of how the two governments have cooperated in areas of mutual concern?

MR. YOUNMANS. In my experience on the commission, which runs over approximately a 7-year period, I can remember a situation where the tribe desired to build a road between the State highway and Cook Creek Road out there. They requested an easement across county property, and an unconditional easement was granted. Obviously, it was to the benefit of both parties.

We have, in Grays Harbor County—we are presently putting together a solid-waste plan, which, like all counties are facing, is quite expensive. In our discussion with the department of ecology, we have indicated a willingness to use a Pacific Beach garbage-dump site as a transfer station, which the tribe would have full use of, the same as any other citizen in that area if they desired to use it. There is no reason why we shouldn't come to that agreement, of course.

We do have the ambulance agreement that I stated earlier, which, to explain it as briefly—Grays Harbor County reimburses the ambulance service approximately \$50 per call for any call they make outside of the jurisdiction. This, again, was part of the umbrella program we have to give complete ambulance service to all of the Grays Harbor County residents. We have these agreements with most of the cities and several of the fire districts. The sheriff, of course, has covered the law enforcement area, where we have had cooperation and mutual understanding.

In the area of the juvenile, the tribe does use some of the county's juvenile facilities to carry out their programs.

Basically, offhand, those come to mind just now.

MR. BACA. Mr. Chairman, I have no further questions at this time.

COMMISSIONER FREEMAN. Mrs. Denney, I would like to pursue your responses to the questions about Title XX. Has the tribe made any application to the State to become a subcontractor for the delivery of certain services?

MS. DENNEY. Only day care. We were one of the five tribes that submitted a Title XX proposal, and we did contract for a day care. As director of this program, I'm reluctant to contract with the State for the provision of any social service functions, primarily because, if we do, then we have to comply with State standards, and State standards are just not relevant on the Quinault Reservation or any other reservation.

COMMISSIONER FREEMAN. Has the tribe submitted to the State office its concerns concerning the—about the State standards and made any counterproposals or any options to the State, asking the State to consider the differences in culture and so forth?

MS. DENNEY. Yes. All Indians in the State of Washington have been bringing this out for a good number of years. Your relevancy of standards that are set up by the State that don't apply to Indian

people—for example, in the area of adoption, Indian people have conducted adoptions for years, but it is not in the same light as a non-Indian adoption, where the child is completely removed from the community, where he has no contact with the parents or any of his relatives ever again, a total removal of the child. That is what the State would like to have happen when they place a child for adoption.

Indian people have children adopted right in the community, and the child knows who his natural parents are, knows who the adoptive parents are, but the roles are so clearly defined that the child has no emotional problems, and the State workers simply do not understand this concept at all.

The other areas of standards I would like to address—the area of foster care. The standards are based upon materialistic things, such as the number of rooms in the home, how the rooms are decorated, just requirements that are all related to material things in a child's life. I'm not criticizing those things. Those things are good, but they're not enough.

Emotional well-being of a child is much more important than material things that surround that child. When I was a child, for example, I slept under the kitchen table with two sisters when we had company. It didn't warp me all that much.

This type of thing, you know, is not in the State standards. The standards for day care providers, a number of square feet per child, and this sort of thing is just not relevant. In many instances, it is not relevant to anybody, not just Indians, but not relevant to anybody.

So, if you contract with the State to provide these types of services, then you're going to have to be in compliance with State standards.

The Federal regulations have stipulated in the area of foster care, licensing on Indian reservations, day care standards that the States must work with Indian tribes and organizations. If they're not able to meet the standards that the State sets up, then they're to help the Indian people and work toward making those standards lenient enough so that they do meet the standards on Indian reservations, but no attempts have been made by the State to do anything about this.

COMMISSIONER FREEMAN. Has there been any—do you have any records, any communications from the tribe to the State or in their responses that could be submitted to the Commission for the record at this time?

Ms. DENNEY. Yes. For example, the day care proposal for the Quinault Tribe, as one of the five tribes. Right away, we had problems with that Title XX day care operation.

Number one, we have a housing problem on the reservation. So many people live just on the exterior boundaries of the reservation, in Moclips, etc., within a half mile of the reservation boundaries.

This program was set up primarily to help mothers that are working on the reservation, providing day care for them. A mother

that lives off the reservation, if she lives only 20 feet off the reservation line, is ineligible for this Title XX program. In addition to that, they have made no provisions for determining eligibility for fathers who are clam diggers or fishermen.

I have repeatedly asked that the State sit down with us and work out this problem, because what good is a Title XX proposal if our women are not eligible because we haven't solved these problems? I do think they are problems that could be addressed and solved very easily, but the letters pile up and communications get shuffled from department to department and, to date, nothing has been done. That has been over a year ago.

COMMISSIONER FREEMAN. Do you have those letters with you now?

Ms. DENNEY. I didn't bring them with me, but I can submit them for the record.

COMMISSIONER FREEMAN. Mr. Chairman, I would ask that the letters be received and inserted into the record at this point. And if the staff will pursue the letters with the appropriate officials of this State to receive their responses and reactions.

CHAIRMAN FLEMMING. Without objection, that will be done.

COMMISSIONER FREEMAN. Thank you.

I have no further questions.

CHAIRMAN FLEMMING. Could I—first of all, Mr. Youmans, you began a response to a question by referring to the opinion of the county prosecutor relative to some jurisdictional matters. Then the discussion went off in another direction. Would it be possible for you to furnish us with a copy of the prosecutor's opinion?

Mr. LEWIS. Yes, sir.

CHAIRMAN FLEMMING. We would appreciate that, and, without objection, we will enter that into the record at this particular time. Would you, the attorney be willing to just identify some of the major points in that opinion at this point? It doesn't need to be all-inclusive, but just some of the high spots.

Mr. LEWIS. I'm afraid it can't be all-inclusive, Mr. Chairman. There are six attorneys in our office. We have a civil side and a criminal side. I happen to be a criminal attorney. I'm not familiar with the opinion, but I'm sure our office will make that available to you.

CHAIRMAN FLEMMING. I would appreciate that.

Mr. YOUMANS. I would appreciate not having to discuss it any further either. They have six attorneys over there, and they can't agree—and I'm merely a layman.

CHAIRMAN FLEMMING. This, I can understand your feeling on that particular point.

I'm very much interested in the whole issue of the delivery of services. I don't know whether you were here when the deputy secretary was testifying today. You will recall that I asked him whether in his opinion the members of the American Indian community were getting their fair share of the Title XX funds that

are now available. My recollection on the response is that he felt that they were getting more than their share. Would you like to react to that response?

Ms. DENNEY. That is nonsense. Not only are we getting less than our share of services, but in most instances the only services the Indian people are getting at all are the services they are providing themselves.

There are a few reservations that haven't developed the capability of providing their own services yet. Those people are totally relying upon the department caseworkers to provide those types of services. They can all testify to the fact that they're not receiving these services.

And, in addition to that, as far as Indian employees within the department, they say, "Well, we will help you Indian people, you know. We will hire a few Indian caseworkers," but they know darn good and well we don't have the Indian people with the bachelor's degree, which is a minimum requirement to become a department caseworker.

I would also like to comment upon the Indian desk position.

CHAIRMAN FLEMMING. I was going to ask you to do that, particularly in the light of your response to Commissioner Freeman's questions as to whether or not you feel that that is a point of contact that can be or has proved to be helpful.

Ms. DENNEY. The Indian desk is one of the most valuable positions that we have within the department. We certainly need more of them. But they're in a very peculiar situation in that when they were established, they were to be advocates for Indians in both treaty and civil rights, and now, the question has been, and we have raised this many times within the past 3 years, who is the Indian desk an advocate for, the department or the Indian people? And they do take their direction from the Indian people. We do contact them as our primary contact within the department when we have a policy problem or any problems within the department. Part of their function is to monitor. That is one of the primary functions.

The reason they moved over into the bureau of social services and are in that department, why they're in there so much, as Mr. Thomas says, they were placed in that department because they are there so much, is because the biggest area, problem area, we have was in adoptions and foster care placement and child protective services, which was within that department.

How can one monitor one's own boss? You know, if I were to monitor my own boss, I would probably get fired. This is exactly where the Indian desk is today. They really are in a terrible situation in that they are monitoring the people who are the direct authority right above them; and the solution, as I see it, to this problem is that there should be a Federal agency or perhaps an Indian Federal agency who would be their employer, but who they would have to answer to directly, but still they would be placed within the

department of social and health services, but I would like to see them under a Federal authority, rather than under the very authority which they're supposed to be monitoring.

CHAIRMAN FLEMMING. Growing out of your experience, do you feel that there are situations where members of the Indian community are denied access to services simply because of the fact that those who have the responsibility are discriminating against them as members of the American Indian community?

Ms. DENNEY. I can give you a personal example. Last year, I was on the Governor's Day Care Ad Hoc Advisory Committee. I was the only Indian person on that committee, and this was an attempt to keep the day care Title XX plan for the five tribes within the current Title XX plan for the following year.

And there was a number of interested parties there besides myself. I believe there was eight or nine on the committee. There were probably 30 people who attended. I was the only Indian person in that committee. And it was stated to me, "You Indian people not only want to take all of our fish, but you want us to babysit your damn kids while you do it."

CHAIRMAN FLEMMING. You run across that point of view in other situations?

Ms. DENNEY. Yes.

CHAIRMAN FLEMMING. Which you feel does impact on the delivery of services to the members of the community?

Ms. DENNEY. Yes. There are many cases where this has happened, and it happens down in the grassroots level, in the caseworker delivery system. There are some caseworkers who are sensitive to Indian people, and there are some that are not. I'm not saying all are bad. We do experience some good casework service from non-Indian caseworkers in some instances.

But the point I'm trying to make is that it's Indian people themselves need to be providing these services to their own people. Only they can understand the needs on their own reservations, and, as far as the State's trying to sensitize caseworkers, it hasn't happened in over 5 years. It hasn't happened. I don't know of any school that can teach you to be an Indian.

So they had 3 years, too. The department has had 3 years to educate a person in becoming a part of the executive staff within the department of social and health services. That hasn't become a reality.

CHAIRMAN FLEMMING. It would help, however, wouldn't it, in connection with the training of social workers, particularly in the State, if they were introduced to Indian culture, tribal government concepts, and so on, in connection with their training program?

Ms. DENNEY. Yes. I think that might be helpful; however, my experience has been in our area that some of them become more antagonistic because they just don't understand our ways.

CHAIRMAN FLEMMING. Are you aware of any specific situation where a complaint was filed alleging that a member of the Indian community was denied access to a service because of discrimination against the individual as an Indian? Are you aware of any formal complaints that have been filed along that line?

MS. DENNEY. I'm not aware of any that I can comment on at the moment. I do know that many people from the Quinault Reservation receive poor treatment when they go in to apply for public assistance. I know that many people on the reservation, prior to Quinault developing its own social service department, were doing without, were not receiving what they were eligible for because of the bad service they got.

Our foster care program is a typical example. We only had seven homes licensed throughout Grays Harbor and Jefferson and Clallam County as licensed foster homes. Most of those were off the reservations.

As I recall, there were only four that were on the reservation that were licensed. Since that time, we now have 31. This is because my staff has got out there and done the work.

CHAIRMAN FLEMMING. Has the tribal government received funds under CETA?

MS. DENNEY. Yes.

CHAIRMAN FLEMMING. You received those as a result of applying directly to the Department of Labor?

MS. DENNEY. Yes.

CHAIRMAN FLEMMING. We have received testimony previously to the effect that there are some within the American Indian community who believe that the most satisfactory arrangement is an arrangement where the Federal Government deals directly with the tribal government.

MS. DENNEY. That is correct. That is the only solution. And not only the CETA program, but the Comprehensive Housing Development Act and Revenue Sharing Act are all bases for this type of funding, and Indian people and Indian reservations are not political subdivisions of the State. We're sovereign nations.

CHAIRMAN FLEMMING. Have you received funds under the Housing and Community Development Act?

MS. DENNEY. I'm not familiar with that. You might ask Justine.

CHAIRMAN FLEMMING. Mr. James?

MR. JAMES. Yes, sir, we have.

CHAIRMAN FLEMMING. For what purpose? What have the funds been used for? To build centers?

MR. JAMES. In the HUD program, there is a clause in there for building a recreation center.

CHAIRMAN FLEMMING. Have you used it for that purpose?

MR. JAMES. We have used it mainly for administration. We have built a playground and stuff like that. Our need was administration buildings.

CHAIRMAN FLEMMING. Do you have a senior center within the tribal government?

MR. JAMES. Yes. At both Taholah and Queets.

CHAIRMAN FLEMMING. Did you get the funds for that housing and community development for the senior center?

MR. JAMES. No. We use our housing center as our senior center.

CHAIRMAN FLEMMING. I see. It is a multipurpose center in every respect.

MR. JAMES. Yes.

CHAIRMAN FLEMMING. Do you operate nutrition programs under Title VII of the Older Americans Act?

MR. JAMES. We do.

MS. DENNEY. That is another problem, too. The tribes are not considered as prime sponsors by the State. We have to go through a third party. The funds for the nutrition program go to the county CAP programs and then out to the tribes rather than looking at the tribe as being a prime sponsor itself.

CHAIRMAN FLEMMING. You are not one of the tribes, though, that is functioning as an area agency on aging. I noted from earlier testimony that there are three tribes in the State that are functioning as an area agency on aging. I gather that is not the case with your tribe.

MS. DENNEY. No, it is not.

CHAIRMAN FLEMMING. Have you made any effort along that line or thought about that as a possibility?

MS. DENNEY. It's something that we're planning for the future.

I would like to say also to the Quinault property owners that we do provide—the social service is available to anyone in need no matter who they are or where they are, and a good number of the people in the surrounding areas around the reservation take advantage of our alcoholism program to a great extent, especially the traffic violators. It is closer for them to come to the Quinault alcoholism program than to go, for instance, into Aberdeen or Port Angeles.

All child protective services and all foster care and any other type of social service is available to anybody, regardless of who they are. They don't have to be Indian.

CHAIRMAN FLEMMING. Thank you very much. We appreciate your being with us and sharing with us the experiences that you are having, both within the tribal government and the county government. Thank you very, very much.

We are now in recess until 1 o'clock.

Afternoon Session

CHAIRMAN FLEMMING. Ask the hearing to be in order. Counsel, the next witness.

MR. ALEXANDER. Joan La France, Mac Oreiro, Richard La Course, James Heckman.

[Ms. La France and Messrs. Heckman, La Course, and Oreiro were sworn.]

TESTIMONY OF JOAN LA FRANCE, DIRECTOR, CURRICULUM DEVELOPMENT DEPARTMENT, UNITED INDIANS OF ALL TRIBES FOUNDATION; JAMES HECKMAN, EXECUTIVE DIRECTOR, NORTHWEST INDIAN FISHERIES COMMISSION; RICHARD LA COURSE, EDITOR, YAKIMA TRIBAL NEWSPAPER; AND MAC OREIRO, LUMMI AND SAMISH TRIBAL MEMBER, EMPLOYED BY THE NORTH KITSAP SCHOOL DISTRICT

MR. ALEXANDER. Starting with Mr. Oreiro; could you each identify yourself for the record, your name and position, job that you currently hold?

MR. OREIRO. Yes. Mr. Mac Oreiro. I belong to the Lummi Tribe and Samish Tribe, and I work in the North Kitsap school district—a new change.

MR. ALEXANDER. You formerly?

MR. OREIRO. Yes, correct. I formerly worked in the Auburn school district—now North Kitsap in Poulsbo, Washington.

MR. ALEXANDER. Ms. LaFrance?

MS. LA FRANCE. Joan La France. I currently work with United Indians of All Tribes Foundation, as director of our curriculum development department. Prior to that, Seattle school system as a human relations inservice training.

MR. LA COURSE. I'm Richard La Course. I am an enrolled member of the Yakima Tribe, and I am editor of the Yakima tribal newspaper in Toppenish, Washington.

MR. ALEXANDER. Mr. Heckman?

MR. HECKMAN. I'm Jim Heckman, executive director, the Northwest Indian Fisheries Commission and formerly with the United States Fish and Wildlife Service.

MR. ALEXANDER. Ms. LaFrance, in terms of your day-to-day responsibilities with respect to curriculum development, could you tell us whether this experience has provided you with a sufficient overview to be able to evaluate curriculum as used in this State as it pertains to Indian people?

MS. LA FRANCE. I think it's provided me more with an ability to state that there is a vacuum of curriculum and what kinds of curriculum needs there are to be addressed in the State.

MR. ALEXANDER. In terms of the statement about the vacuum, is it that Indian history, culture, legal status is ignored completely, or is it just treated in a superficial or occasional manner?

MS. LA FRANCE. In my experience, both in the school district and as a curriculum developer, working with a lot of teachers, many of them who are continually wanting information and advice—the main, I think the main impact of the curriculum in the schools, if anything, has been to teach or talk about Indians as a people who were or who have been—we are treated as a people of the past.

Now maybe there is curriculum in the lower grades or a special unit around Thanksgiving somewhere where the colorful aspects of our history and dwellings are brought out. There is a gross lack of information about us being a contemporary people, a people who still live in this country and have a unique relationship to this country, both as its first Americans and, also, as Americans with relationships to the U.S. Government. That is completely missing, and most teachers are not informed in any way so they're able to cope with how to teach it.

MR. ALEXANDER. In relation to some of the specific things that have been mentioned over the past day and a half, in your experience, have you seen any, and if you have, to what extent, materials that deal with what a treaty is, what constitutional status is?

MS. LA FRANCE. I have never seen that produced by a publisher which, of course, is the main supplier of curriculum tools or materials. I have seen those produced mostly by organizations that are Indian oriented and are trying to inform the public about themselves. However, the schools or the curriculum suppliers to the schools have taken no responsibility or initiative in this effort that I've seen.

MR. ALEXANDER. In the range of civics or history books or political science books that would be used, let's say, at the high school or middle-school level, are Indian governments discussed as one of the government units within the United States?

MS. LA FRANCE. Not to my knowledge. I might point out that quite recently the Seattle school district published a book on the history of the State of Washington. That book very deliberately set out to talk about the minority role as well as the majority role in the development of the history. The book obviously had to be corrective because there was no mention of Indians or minorities in most of the books being taught in the past.

That book, at this point, to my knowledge, has not been accepted by the Seattle school board, but they are tabling a decision on it. One of the criticisms of the book was that it had too many Indians in it. It is the first attempt I have seen by a school district to talk about the subject and the attempt right now is in a tabled state.

MR. ALEXANDER. We have also had testimony over the past day and a half about difficult relations between Indian students, non-Indian students and teachers in some school systems in the State. Do you see any correlation between the curriculum that is used in the school system and the information provided about Indian people in the conflict situation that I just mentioned or potential?

MS. LA FRANCE. Yes, but I think it is a little larger than that. By the time children get to school, because of the media role of the Indian in this country, they have some preconceived ideas of Indians, the cowboy and Indian movies on TV, etc., as being both stereotyped and kind of bad people, people to be frightened of.

When—in a situation like Seattle, an Indian child, who is probably relatively isolated in the school system, where he might have a large number of Indians, we have also a large number of schools and a wide dispersion of our population throughout some city, so the children find themselves alone in a school system. There is nothing in that system to assist Indian children to feel at home there, unless individual initiative is being taken by a teacher, but there is nothing that is mandated by teachers so much to—and a lot of teachers in my years with the school district and inservice training of teachers—a lot of them are attempting and want to, but they have to take that initiative. If they are failing to do so, there is little in that school to help that child to learn about himself.

In the meantime, the non-Indian children have negative associations about that child as an Indian, based on their conditioning that Indians are bad people; they are threatening people; they are scary people.

I have done pretests in Seattle schools with some of our curriculum materials with children from the age range of first through fourth grade and asked them what images they had of Indians. They were scary ones. They were things to be afraid of or frightened of or else novelties. These children have no way of dealing with an Indian child, and unfortunately if the Indian child is not being reinforced by a teacher or the misinformation or lack of human relations is not going on in the school, it causes a great deal of alienation and isolation of the Indian children in a public school setting.

MR. ALEXANDER. Mr. Oreiro, you work in a public school system today, and you've worked in different parts of the State. Essentially, I want to ask you the same question I just asked Ms. La France, which is, what impact do you see the normal information provided to students through their textbooks and their courses and curriculum having on relationships within the school system and from other informational sources?

MR. OREIRO. Yes, Mr. Alexander, the lack of information is the key to the whole situation we're talking about now. Again, to allude to Ms. La France's last comment on information not being there in the classroom or designed for professional reference libraries, both types of materials are not there, and how do you make a cadre of teachers pick up the information that we do provide for them? That's another question that we've been internalizing in public education.

The conflict in the classroom, with the Indian student and the non-Indian student is, really stems from the basic fact of lack of information and response to the curriculum development of tribal sovereignty, Federal treaties.

We, like Poulsbo public school district, I went into a northwest history class and spoke for 3 hours, three different groups of children and dealing with a northwest history teacher that does not—is not their background, period, because, one—because of levy failures in the public school system, that person assigned to northwest history

without having a history background by trade or by training, he is a mechanical drafting instructor and driver's ed. instructor; so henceforth you have a lack of interest in delivering proper good information to the students that we are concerned with. So that is one of the major problems that we're having in public education.

MR. ALEXANDER. How does it impact in terms of the relationship between the students? Does it create for any potential conflict that could perhaps be alleviated with information that was produced all along or by other techniques?

MR. OREIRO. Correct, Mr. Alexander. The area of treaty itself, that is a full quarter project. If you really want to deal with that effectively, around getting the information properly across the total district student body, once they're at the junior high school level or high school level, it is a full course study.

And that information, the teachers do not have that background. We can't deliver that background because of lack of funds. In our inservice public education looks at Indian education as the vehicle to do this, and we are not equipped to do that. So it goes right back down—they talk about the Constitution in general, what it means for all the people, and then they don't allude to, well, the multimedia, the news press, prints information, parents are misinformed about Indian treaty rights, and teachers do not take time out to do background research, henceforth, do not really address the answers that the students are looking for, and they are left hanging and overreact because they don't understand it.

MR. ALEXANDER. In the schools that you have recently worked, Poulsbo and Auburn, how would you characterize the relationship between Indian students and non-Indian students and faculty?

MR. OREIRO. It is interesting. The students that I have talked to, the two students, named, students that grew up in local communities have an understanding of the local situation and the structure of Indian relations with the Federal Government, in a general sense. The problem stems in conflict with transient students from various parts of the country; this is what I dealt with 2 weeks ago.

I spent 3 hours in three different classes and we had 11 kids that actually grew up in that county. We have a various transient or mobile community—or whatever you want to call it—population now. So they're bringing in prejudices from other areas of the country that, really, when you talk about ethnic people or minority people in general, they try to associate the Indian, and they do not understand the unique position the people have with the Federal Government, so we are generally miscategorized and misunderstood from that standpoint.

Conflict with the faculty staff and institutional racism simply is something that really has to be addressed. We're talking about vested interest; we're talking about curriculum committees that are developed to work with social studies curriculum in a public school, and I've known fishermen, commercial fisherman that have been

involved in curriculum committees. I feel that is a wrong move in some situations because of the biased opinions of vested interests. So I don't feel that they really should be sitting on curriculum committees to review other ethnic materials, because of the biases. It is a vested interest. It has created conflict in that sense.

MR. ALEXANDER. Are there, in terms of the personnel that you found in the school systems, both of the ones that have been mentioned, are there Indian teachers, administrators, policy-level people within the school system?

MR. OREIRO. The situation we are lacking still in the large, where I called [incomprehensible] last week, after I found I was subpoenaed and we're talking of some 40,000 certificated teachers in the State of Washington, we have a less than 150 certificated Indian people in the education in the State of Washington, so there is an imbalance right there in that fact. So where we have our faculty, you can't develop a tenure system where a person can climb into the upper echelons of leadership. We're talking right from the classroom teacher to a department head, we're talking about a program director or a task-force person; we don't have any people at any of the levels, they're really rare to find unless you go into the highly concentrated, Indian-populated area such as Matah, Neah Bay, such as the Colville area.

We have problems in that area. We have less than a half-dozen certified Indian principals in the State of Washington. They're not around so we cannot address that area. We don't have the people in the decision-level-making areas.

It is coming to being; it is very slow, which goes to the national teacher training programs, at the national level. Right now we're saying there's a surplus of teachers in the United States; in fact, you're asking a question, are there Indian people involved? No, because the lack of funding for special Indian teacher training programs are nonexistent. There are four, I think, in the United States, and one of them happened to be at the University of Washington, but we cannot get refunded for teacher training; we don't have them; they're not around.

MR. ALEXANDER. Mr. La Course, could you tell us what you do?

MR. LA COURSE. I'm the editor of a tribal newspaper which appears biweekly.

MR. ALEXANDER. Previous to that?

MR. LA COURSE. I have been the editor for the Yakima Tribe, for a period of—the Umatilla Tribe for the period of a year, and for the 5 years previous, I was news director of the American Indian Press Association.

MR. ALEXANDER. Without relating to any specific story at the moment, in your opinion starting with the educational system, which has just been described as at best provides a void and sometimes misinformation, when we move into the other public

media systems, does the Indian side of the story generally get reported sufficiently or at all?

MR. LA COURSE. I should add one more bit of my experience because that's part of my answer to you.

Prior to working as a full-time, fullweek individual in the area of Indian journalism, I worked for the Hearst Corporation in a large morning daily newspaper with a staff of approximately 500 people. I eventually resigned and began the direction of my own work career that I have now because of a feeling of absolute impasse in the area of recording the daily events of Indian people in a daily paper serving the multiracial leadership which makes a daily newspaper a business, and to apply it—specifically to Washington State, it is where I worked, and that is my judgment.

MR. ALEXANDER. What do you account for the—what you have just said is a lack of coverage, if you will, or a lack of the Indian side of the story in the general media in Washington State. What factors would account for that in your view?

MR. LA COURSE. Through the period of the hearings yesterday and through the whole of today, there is the pointing of a finger perhaps, certainly the pointing of mental attention, to the failure of school systems dealing with children to correctly inform them of the complexity of American society.

I would like to refer to something good in terms of media that happened in the late sixties and it is partly in answer to an observation Commissioner Freeman made yesterday. I think that Indian people today have no real access to media. The good thing in the 1960s would be the Kerner Commission report which diagnosed the first serious discussion of minorities and media problems. But that sad report said that in the late sixties, the civil insurrections across the United States produced two separate societies, black and white, who were becoming increasingly separate and increasingly divided.

When I read the report as a graduate college student at that time, all I could think was how unfortunate, there may be a total of 30 separate societies which constitute the America we all live in, and Indian people are certainly one of those, somewhat invisible, certainly uninvestigated societies in terms of media.

I have seen over the last decade a great turnout of Indian people of various ages in media careers, that the extent of involvement, in order to tell Indian realities in print or in radio, occasionally in video, has to do with allying these individual people with Indian efforts, not in the city of Los Angeles or Denver or New York City but within or very near Indian communities themselves.

MR. ALEXANDER. In the normal way a story would be covered, is there a disequilibrium at all in the information feeding sources into media, the way—you worked on a busy daily, you said, with a large staff? If a reporter, for example, came up through the educational system that's been described for a day and a half, what basis would

they have for reporting an Indian side of a story or what a treaty was or anything like that? Is there in the Indian community or in the public relations community, if you will, a mechanism that is sufficient to that, or let's say, the State or any other party that feeds information into the system?

MR. LA COURSE. I'm going to answer your question indirectly, if I might. I do have a diagnosis of the problem of minorities and media within Washington State, and I think it originates in school systems.

There is what amounts to a cultural filter which makes this individual TV reporter, that individual writer, perhaps a news director of a radio show incapable of actually perceiving what this day means, what its issues ripple is, what its inferences are, what issues need to be investigated, and it is not altogether conscionable to condemn individuals who have never been given the opportunity to have their eyes entirely wide open, and I think all of us have these cultural filters, including Indian people.

I don't think it is intelligent to assign an American Indian reporter in Washington State to understand some very complex issues of black people anywhere in the State, and there is an increasing sensitivity on the part of the national networks, on the part of national news services, and it is quite a change to employ people of a specific minority to take that beat seriously and to report it largely, but that change is coming and very gradually.

MR. ALEXANDER. When you said "minorities," were you specifying or referring specifically to blacks and women and so on, or were you also including Indians within that rubric?

MR. LA COURSE. Of course, I would call the major communication media within the United States, the wire services, the networks, the radio networks, and so forth, a majority media, and there are many minority media within the country serving every definable community of people. I dislike the words "majority" and "minority" because they enter all human beings into a numbers game basically.

MR. ALEXANDER. What types of things do you perceive that, or what responsibility the Federal Government may have to counteract the disequilibrium, if any?

MR. LA COURSE. A number of Indian reporters met with some people from the Office of Management and Budget [OMB] from the White House in 1975, during the last several months of the presidency of Gerald Ford, and there was a lot of inquiry concerning the possibility of Federal funding for Indian media efforts and, of course, other Indian media efforts. The OMB people said at that time because of the constitutional issues, Bill of Rights issues, that there would have to be a permanent disalliance and nonfunding of communications efforts on the part of the American Government.

I might add it is quite different from that spelled out by the Canadian government, which pumps in several million dollars a year for the development of Indian and native television and press across native Canada today, quite different.

MR. ALEXANDER. Mr. Heckman, what are your current responsibilities again?

MR. HECKMAN. I am the executive director, Northwest Indian Fisheries Commission, and that means I do all the dirty work.

MR. ALEXANDER. We, of course, have just been discussing how information is generated and the notion that there is a great deal of misinformation or, perhaps, one-sided information about. In the fishing controversy, it is your view that this is also true?

MR. HECKMAN. The answer to that is definitely it is true. Following up with what Mr. La Course has said, I don't believe that there has been a major effort from any forum or any organization, including the Federal Government, to attempt to bring the right information out to the public for proper education of the public, which is understandably one tremendous task to begin at this time, when you consider that there have been many, many years of pointing the finger at the Indian people as the cause for the decline of fishery resources.

Non-Indians who manage the resource are obviously responsible for mismanagement. The habitat wasn't protected, too many fishermen were allowed to fish, there was overfishing, stocks were destroyed, but they didn't want to point to themselves, so they pointed to Indians.

There's been too many years of educating non-Indians to the facts that Indians have destroyed the resource, the sportsmen paid for the management of the resource with their license fees only.

MR. ALEXANDER. Let's just take two things you said: your responsibilities with the Northwest Fishing Commission involve collecting data for all the treaty areas and going back through historical fishing runs and so on.

What—as specific as possible at the moment and, if you can follow up for the record with more specifics, that would be fine—what proportion of the catch, both sport and commercial, were Indian people taking in the pre-Boldt days, late 1960s, early 1970s?

MR. HECKMAN. As nearly as we can figure with the scanty records that were available, they were taking approximately 5 percent of the total harvest.

MR. ALEXANDER. And the other 95 percent broke down in a sense between commercial and sports fishermen?

MR. HECKMAN. Yes.

MR. ALEXANDER. What proportion of that would be sports fishing, do you recollect at the moment?

MR. HECKMAN. In the case of salmon, perhaps one-seventh or one-eighth of the total harvest, mostly in the ocean.

I think the important fact here is that when considering the accusations of the agencies of the State and others that Indians destroyed the fishing by overfishing, it is clearly a falsehood.

Obviously, if someone is going to be blamed for destroying a resource because they overharvested it, it can't be the guy who got the 5 percent, it's got to be the people who took the 95 percent.

MR. ALEXANDER. There are other such, in your view, commonly held fallacies about the fishing controversy?

MR. HECKMAN. Well, as I said, the—of course, the popular view today and building, since the decision in the Pierce County Superior Court, relates to hatchery fish, and the claims of the State and the non-Indian interest groups that those hatchery fish should not be available for sharing with the Indians, as if they were paid for only by non-Indians and as if they were something over and above what was here and available to Indians at the time of the treaty. These are, again, falsehoods.

MR. ALEXANDER. Well, you were with the Federal Government's Fish and Wildlife Service; is that correct?

MR. HECKMAN. Yes.

MR. ALEXANDER. In talking about fisheries, how much Federal money are we talking about coming into the State to pay for hatcheries and so on?

MR. HECKMAN. I don't have a total amount, but I can give an example. For instance, in western Washington there are 7 of about 12 major steelhead rearing projects operated by the game department, and 7 of those 12 are financed 50-50—on a 50-50 matching basis with the Federal Government under the Anadromous Fish Act; this includes dollars for the initial construction and is for the operation.

There are other dollars that come into the State through the Dingle-Johnson Act, which in effect is a sportsmen-supported funding. There are other dollars, as well. The Mitchell Act, for instance, on the Columbia River that covers the same area of assisting and reimbursing of fisheries projects as does the Anadromous Fish Act.

MR. ALEXANDER. In your view, in terms of most of the information that is currently around that one hears all over the State about the fishing controversy, is that basically State-supplied information and data and statistics and so on, or are there more than one source for someone to go to decide what is reality and what is, perhaps, not reality?

MR. HECKMAN. Basically, and for most of the years that we've had to deal with this situation, it has been State agencies that are providing the education of the public, I guess we could call it. But there are other agencies, some of the Federal agencies, since the Boldt decision, that have been involved.

For instance, the National Marine Fishery Services. There was a report and I have a copy of it if you would like it for your record—by the National Marine Fishery Services produced, I believe, in 19—late '75 or '76, that grossly misrepresented the comparative catches between the Indians and the non-Indians.

MR. ALEXANDER. How would you account for something like that happening?

MR. HECKMAN. Our question to the National Marine Fishery Services is how could they account for it. We thought it was absurd that it would be done in the first place, and we have never, to this date, had a retraction of that report, which misrepresented the catch showing the Indians catching a much larger share than they actually caught, and obviously blaming Indians and the Boldt decision for creating some kind of economic distress for Indian people.

MR. ALEXANDER. Can we have that report for the record, Mr. Heckman?

MR. HECKMAN. Yes, I have it.

MR. ALEXANDER. I would like to have it introduced into the record.

CHAIRMAN FLEMMING. Without objection, we'd like to have it entered in the record at this point. You have just made some comments relative to failure to respond to certain issues that are identified there. I would like a letter addressed in behalf of the Commission to the appropriate official asking the same question.

MR. ALEXANDER. It will be done.

COMMISSIONER FREEMAN. Could we ask Mr. Heckman to describe again the organization that submitted—that compiled and released the report.

MR. HECKMAN. It is the National Marine Fishery Services of the United States Department of Commerce, and if you like—

CHAIRMAN FLEMMING. I would like to just change my request, and I would like the request to be addressed to the Secretary of Commerce.

COMMISSIONER FREEMAN. Mr. Chairman, could we also ask if this report, the inaccuracies in this report, are they marked so that the Commission would know what the inaccuracies are?

MR. HECKMAN. No, they are not marked in that report, but I can provide you with a newspaper account of the criticism of the Department of Interior, Solicitor's Office, relative to that.

CHAIRMAN FLEMMING. Did the association you now represent—as I understand it, you wrote to the government identifying what you regard as the errors; am I right?

MR. HECKMAN. This report came out while I was working for the Federal Government.

CHAIRMAN FLEMMING. I see.

MR. HECKMAN. The Northwest Indian Fisheries Commission did comment on it, and I'm sorry I do not have a copy of those comments.

CHAIRMAN FLEMMING. Could you get it?

MR. HECKMAN. I will. I will get those. I will provide you with an analysis, like I said, prepared in the *Tacoma News Tribune*, reflecting Mr. Dysart's—of the Interior Solicitor's Office—reaction to that.

COMMISSIONER FREEMAN. It would be more appropriate to have the official critique and analysis that were made. The newspaper clipping would be helpful, but we would not want to rely on the newspaper story. We would like to have the actual—

MR. ALEXANDER. We'll follow up on that.

MR. HECKMAN. I can also provide you at this time an analysis by a Mr. Hank Adams, who was consultant of the Puyallup Tribe at the time of that report, and I will follow up with a copy of our own.

CHAIRMAN FLEMMING. Just to make sure we're clear. We do have the report on the economic impact of the Judge Boldt decision as prepared by regional economists of the National Marine Fishery Services, northwest region. That is being entered in the record as an exhibit. Then you are going to provide us with a letter or document which critiques this particular report, correct?

MR. HECKMAN. Yes, I will.

CHAIRMAN FLEMMING. And that will also be entered in the record at this point. As I understand it, the communication that we're talking about now contains a request for further comment on the part of the Department of Commerce and, to your knowledge, no comment has ever been made by the Department of Commerce.

MR. HECKMAN. No followup report has been made that I know of.

CHAIRMAN FLEMMING. Well, did the Department of Commerce respond in any way to the critique that was furnished them?

MR. HECKMAN. I can't recall precisely, I just—

CHAIRMAN FLEMMING. The record should show that, as the Commission on Civil Rights, we will request the Secretary of Commerce to provide us with that Department's comments on the critique. That way we'll get the issue in front of them.

MR. HECKMAN. You'll do my work for me.

MR. ALEXANDER. Mr. Heckman, one of the things that has been repeated to us many times in staff interviews is that based on the allocation in the Boldt decision that Indians are taking 50 percent of the fish and in some cases more. Would you comment on that from the statistical information that you have available in terms of the most current fishing runs that are available?

MR. HECKMAN. Well, I should explain that following, early following the decision in *U.S. v. Washington*, there was much disagreement on how the data should be presented, and there was finally a court order to have a specific format for showing that information. I have brought with me a report for both 1975 and 1976 following that format. It covers each of the species of salmon that are harvested by the tribes, and without going through it species by species, I can certainly say that overall Indians have not come close to 50 percent on any given harvest yet. Immediately following the decision, I believe the 1974 catch was around 5.4 percent, again very similar to that prior to the decision. Then it jumped up in the

neighborhood of 12.5 percent, 13 percent, and I don't know where it is going to be in 1977, but the tribes did do a bit better on the large fishery centered around the Frazier River, sockeye and pink salmon. In that case, I believe, the final results were overall between pinks and sockeyes around 13 percent.

MR. ALEXANDER. Is it even fair to collectively ask what the Indian catch is? Is there significant differences between the catch from, let's say, south Puget Sound tribes and tribes on the Pacific and tribes in the northern part of Puget Sound?

MR. HECKMAN. Well, yes, there's a considerable difference between the harvest of some northern Puget Sound tribes compared to southern Puget Sound tribes. The Frazier River runs of sockeye and pink salmon that are managed by the International Pacific Salmon Fisheries Commission migrate through the fishing areas of some northern Puget Sound tribes, eight of them in total. These are not available to such as the Squaxin and Nisqually Tribes in southern Puget Sound so far.

MR. ALEXANDER. So the figures for some of the tribes could be, in fact, even lower than the ones that you indicated. This is correct? On particular runs?

MR. HECKMAN. And it can be very misleading, too, because the Lummi Tribe may participate in an Indian fishery that totally takes 18 percent of the sockeye harvest, the huge harvest and 18 percent of that is quite a few fish, and the record may show, for instance, that the Nisqually and the other southern Puget Sound tribes took 50 percent of the chum run, which may be a minute parcel of fish compared to that huge Frazier River run, so the record in the paper and so forth make it appear that the Nisquallys are doing quite well when, in fact, they're not.

MR. ALEXANDER. As this controversy has continued over numbers and views, has there been any attempt that you know of in addition to that report that was mentioned previously to sort of set the record straight either by your organization or by the Department of Interior, as trustee for the treaty tribes or prime agent for the trustee of the treaty tribes?

MR. HECKMAN. Well, the Department of Interior has produced a couple of brochures explaining the treaties and explaining the court decisions and in some instances, something about the catch, comparative catch of fish. I would have to refer to it as a rather mild attempt to counter the large volume of material that comes out of the State agencies.

MR. ALEXANDER. Could we have the two documents that you previously referred to, '75 and '76, introduced in the hearing record at this point?

CHAIRMAN FLEMMING. Without objection they will be entered into the record at this point.

MR. ALEXANDER. I have no further questions at this point.

MR. HECKMAN. These are documents prepared by the Northwest Fisheries Commission.

MR. ALEXANDER. Thank you.

CHAIRMAN FLEMMING. Really, one question that I did want to ask. It relates to what we have just been discussing. You don't know of any overall study that has been made relative to the impact of the Boldt decision that you would regard as an indepth and objective study?

MR. HECKMAN. Like I say, only the Department of Interior documents that give a general overview of the treaties, the United States responsibilities, and some explanation of the court decisions that have come down regarding this.

CHAIRMAN FLEMMING. We have those Department of Interior publications?

MR. ALEXANDER. We have some of them.

CHAIRMAN FLEMMING. I would like to make sure that we have the ones that have just been referred to.

MR. HECKMAN. I can supply you with that.

CHAIRMAN FLEMMING. Thank you. Do you know of any effort that is being made to get such a study made? Listening not only to the testimony of this panel, but the testimony that we've been receiving in the last 2 days, it seems to me there's a very real need for an indepth, objective study of the impact of the decision, and I am just wondering whether any efforts are being made to get such a study commissioned?

MR. HECKMAN. I would be remiss if I did not point out the effort of the Presidential Task Force on the Northwest Fisheries which assumedly had this as a major objective of their efforts. I am not certain as to what progress they have made so far, but judging by the fact that they are taking some actions at this time and are preparing final reports to the Congress and to the President, or maybe the reverse of that, to the President and to the Congress, I doubt that they have had time or the background or the expertise available to them to have made this overview study and have such a report available.

CHAIRMAN FLEMMING. Let me ask this question, do any of the newspapers in the State of Washington employ what the *Washington Post*, the *Washington Star*, and others referred to as an ombudsman, namely, a person who steps back and takes an objective look at the way in which the newspapers have dealt with a particular issue? Is there such a person on the staff of—on the staff of any of the newspapers in Washington?

MR. HECKMAN. I'm not certain that I understand enough about journalism or newspapers to properly answer your question. I think that it would be unfair to say that there were not some objective people employed by the media.

CHAIRMAN FLEMMING. No, I'm—I assume that there are. In these two instances, and there are other instances over the country, they put on the editorial staff a person whose business is to criticize, both positively and otherwise, the reporting of events, editorial comments, and so on, and then his reports are published in the newspaper and oftentimes they're very critical of the way in which a newspaper has handled a particular story. We keep reading reports of this kind in both the *Washington Star* and the *Washington Post*, and I was just wondering whether any of the newspapers here in the State of Washington had employed a person and assigned that person that responsibility? Obviously, he's put in a very independent position. He doesn't report to anyone, really. It's up to him to call the shots as he sees them, and I'm just curious as to whether there was such a person on any of the staffs here, and if so, if that person had dealt at any time with the way in which the stories have been written relative to the Boldt decision and relative to other issues affecting the relationship between the American Indian community and the larger community.

MR. LA COURSE. I would like to make a few observations on that matter. To my knowledge, neither the newspapers in Olympia or Seattle, which are the largest cities in the State, have ombudsmen presently. In the drafting of the editorials for major dailies in the State, very often the reporters assigned to the regular beat of a fishing story or the statehouse, what not, have the unacknowledged duty of drafting editorials for the paper. On any large daily which has a few black employees and occasionally an Indian, some Oriental, you will find philosophical splits among the news staff; you'll find philosophical splits among editorial staffs; and very often a fatal lack of communication within those groups themselves. An ombudsman position would be a highly welcome item, certainly, in the regular press of Washington State and that does not exist.

CHAIRMAN FLEMMING. This leads me to pursue a little bit a matter that you've discussed with Counsel. This Commission about a month ago, 6 weeks ago, put out a report on the TV industry in which we found that, in our judgment, they were not carrying forward a very vigorous or effective affirmative action program in the area of employment. We also found that, from a programming point of view, that there is an awful lot of stereotyping of minorities and women going on with an adverse impact on the attitude of the Nation toward minorities and women. I gathered from your testimony that you feel that both things are true as far as the American Indian community is concerned here in the State of Washington. A, that there are very few members of the community who are actually employed by the media. In the second place, due to that and other reasons, but I mean, due to that as one reason, there is an unfortunate practice of stereotyping as far as the members of the

American Indian community are concerned. Does that sum up the point of view that you were expressing a little while ago?

MR. LA COURSE. Yes, I would like to refer to what Ms. La France was saying. There is a lack of carefully written materials about the political past of the peoples in the Washington Territory and the Indian territory prior to that. I think all of us as people, who are dealing with public issues, whether they are fish, media, areas of education, when we're looking—I'll just mention something I hear very frequently. Many adult Indians simply give up on the present generation of white people. It is very crude to say, but I think that final break of a thread of confidence is there. It produces a question what thread of confidence do you have to the new younger generation. There are experiments within schools. I look at media as a kind of a continuing adult education area there. Newspapers can refer to treaty matters, they can reprint treaties, they can analyze from the inside the shape of tribal governments, chart on a week-by-week basis the activities of tribes, quoting people who are intelligent, clear, and comprehensible, and the like. I think we're slipping away from a problem which was the opener here, on, which is really the shaping of the young mind in a fully intelligent fashion. I would like Mrs. La France to touch that.

MS. LA FRANCE. I would like to make a few comments relative to that. In terms of curriculum development, and we're talking about the fact there's a great need for that because people just don't understand who Indian people are in this country. There is no commercial efforts and there are very few school directed efforts that we know of. Obviously our own survival needs dictate there are a lot of Indian efforts to do it, and to try to do it in a very fair, unbiased, and honest form so at least something exists that the public can use. We have one effort right now that we are attempting to work through the superintendent of public instruction's office to provide a curriculum packet to teachers called "The Treaties: A Northwest Perspective." It deals with how to talk about really fishing and the Boldt decision, but if we were to talk about fishing and the Boldt decision in the title, we know that with the sensitivity of the public to that, it would be deemed controversial, when it is in fact just factual kinds of information, historical and contemporary, about treaties and this one issue.

Both newspapers have provided in a sense in Seattle, the *Times* and *PI* [*Post-Intelligencer*] some data that we are able to use, summaries of a series of articles, either about what's happened to salmon, because they were interested in looking at that, or the impact or what did Judge Boldt say in a series that are being helpful. At least they provide us some material. So there's been some effort. But I think the problem is, even though, and I'm thankful those efforts are there and we have the assistance of that material, the problem exists that Indians are still seen as people to be afraid of, as

people who threaten progress, as people who have taken away from the ability of growth or economic progress in this country, you know, they were fighting the pioneers and that sort of thing.

That submerged image has never been corrected in America and still isn't. So now we're talking about the rights of Indian government, which is no different really than the rights of anybody to local government in this country, the rights to protection under law. But the way it is coming out, because it comes out in the media when we are in confrontation over these rights, suddenly we're being seen again as the bad guys who are somehow threatening the civil rights of other Americans, as we are talking about our own. It is hard to put your finger on it because it is almost a, you know, a whole network of condition, all along, coupled with the fact that very few people are prepared to deal with the fact that Indians are alive and exist today.

CHAIRMAN FLEMMING. I appreciate those comments very much. I was about to ask whether or not any efforts have been made to inject into the adult education programs of the State the kind of materials that you have just been talking about, the kind of materials that you are endeavoring to get into the curriculum as far as the children and young people are concerned. Personally, I believe that getting material of this kind into courses of study for children and young people is a must. There isn't any question in my mind about that at all, but as one gets a little older, he also looks forward to some things happening while he's still alive, and what I'm wondering is whether or not the real drive to inject materials of this kind into adult education programs could help anyhow to bring about a situation where the older American Indian wouldn't just completely lose faith as far as the older white persons are concerned. I mean, is there a mission there for adult education that is recognized where something is being done about it?

MS. LA FRANCE. Others may want to respond to that. I have to ask you a question. Are you talking about like colleges and universities and junior colleges or basic education for adults who have not—

CHAIRMAN FLEMMING. I'm talking about all the way through. The basic education program, obviously, provides an opportunity to inject material of this kind, and we did take some testimony yesterday, I think it was, to the effect that some members of the American Indian community are being given the opportunity of participating in the basic education programs. But I moved from there to your community college and then up to the university level. I suspect that every community in this State is influenced to some degree by the extension programs or the adult education programs of the University of Washington, Washington State, Evergreen State, and so on.

I am just wondering whether or not, as those institutions provide opportunities for adult education, whether they are providing

opportunity for adults to develop a better understanding of Indian culture and tribal government and so on, because it is clear to me, from the testimony we've listened to, that there are a great many adults who do not have any understanding of the treaties, of the tribal government, and the implications of it and so on, and they are reacting from the position of no knowledge rather than knowledge. I am just wondering whether an effort is being made to inject this into the adult education programs to the same, in the same way that the effort is being made to inject it into elementary and secondary.

Ms. LA FRANCE. The only way I can speak to that—we have like Indian studies programs or ethnic studies programs in various colleges and universities, and I'm sure that there's a great attempt made in those. I think many of those programs are in jeopardy, however, in the long run. Again, this is information that should be integrated in the kind of education provided all Americans all along.

CHAIRMAN FLEMMING. That's my point.

Ms. LA FRANCE. And these programs tend to still remain isolated and reach perhaps Indians or non-Indians motivated to want to find out, but there's not a mandated way that all people are required to learn about these situations that I know of.

CHAIRMAN FLEMMING. Do you want to comment, Mr. Oreiro?

MR. OREIRO. That was interesting, to the fact that ethnic studies are still really an elective at all campuses, and that's one issue. We talk about the LEA [Local Education Agency], the public education system, we should look at mandatory, multicultural requirement throughout the United States because we are multiethnic in our making, and so we are dealing with non-Indian people coming to wanting to teach in the Northwest and all of a sudden, bang, they're dealing with Indian children. They have no idea of some of the needs of Indian children, socially and academically, and how the social relationships and that is a major problem, and I am fascinated with that, and I work with people in that, in public education.

In the area, the only time I see non-Indian people people coming to an Indian reservation is on a social tone, there's the salmon barbecue, and senior citizen can have a dollar plate instead of a \$2 plate, but it is never in that real realm of, "Do you know us, are you listening, and do you understand me as a neighbor?"

MR. LA COURSE. I did want to say that the receptivity of the adult citizen varies a great deal around the State, and the sensitivity of media to Indian concerns varies a great deal around the State also.

Yesterday, Bernie Whitebear, of the United Indians of all Tribes Foundation, assessed Seattle as being very liberal, alert, and sympathetic to legitimate Indian concerns. That's very good to hear from a person who lives on the Yakima Reservation approximately 140 miles from here, in a small community of 6,000 people, and I am saying that genuinely. I am grateful to hear that's true.

I have lived in the city of Seattle and I can see that it has grown. The difference between the citizenry in the rural inland is very

much reflected in the local media that forms opinion on the inland of Washington State. The liberal media—press, radio, and TV—are a coastal phenomenon in this State. On the inland, Spokane, Yakima, Walla Walla, those areas where there are also fishing conflicts and jurisdictional tax conflicts along the Columbia Basin inland—we find many tribal councils saying that wire copy run from AP or UPI is used only in newspapers if it has a very strong vitriolic bite into an Indian leg or something along this line.

There is legitimately the use of a word, pardon me, one can fairly characterize many of the rural, very stable, inland farming populations and towns of Washington State as people of the turn of the century, not so much late 20th century people but very, very rural, you know, early Westerner type of people, and if there is a backlash phenomenon in Washington State, it is quite different inland from the coastal area, and I just, I guess, my conclusion would be that the specific media problems on the inland are quite different perhaps even in nature than they are on the coast.

CHAIRMAN FLEMMING. Commissioner Freeman?

MR. HECKMAN. Could I comment on that particular subject, too?

CHAIRMAN FLEMMING. Yes.

MR. HECKMAN. I just wanted to comment that the Northwest Indian Fisheries Commission has recently gone through rejuggling of the budget and attempting to accommodate what we now feel is a very high priority item, and that is an education of the public.

We see that not only do we need to get the real facts out and try to provide these and some kind of educational process to the media people so that they can then present these accurately to the public and then hopefully target in on the Congresspeople, who will have some more direct effect upon Indian treaties and Indian fishing rights and so forth. So we have set aside some considerable amount of funds to contract with a professional organization to help us in this scheme. We see not only do we need to go directly to the adult voting population to attempt to feed them some true facts to affect the Congresspeople, but we need to go to the Indian people and we need to present some facts to them, too, because so often we have one heck of a time finding Indian people in the fishing business, in the fisheries management business, who are well enough versed in the subject of the Boldt decision and in the fisheries and the responsibilities of the United States to be able to respond to inquiries from the press. So this would be a major effort on our part in this coming year and beginning immediately.

CHAIRMAN FLEMMING. Thank you. Commissioner Freeman.

COMMISSIONER FREEMAN. I was going to speak to the testimony which we have heard during all of yesterday and today which has demonstrated that there is a very real need for public information and education and suggest that each of the organizations might, from their various points of view, take on what we call a clearinghouse function, putting out a very basic brochure, and

because I was amazed to hear the perceptions which reflected no understanding about what a treaty is, no understanding that there is a treaty, no understanding of rights and responsibilities. It seems that before one gets even to the Boldt decision that one has to go back to some very basic ideas and there is certainly no easy answer, but I think that it must be done.

Now, you were putting—you said something about the salmon barbecue, but there may be a kind of an education that can go on there, because, first of all, you've got to get the attention, and if a person, if individuals would come to a social gathering such as this, and all of the pictures or, which one could be pointed to would be pictures which would be educational, there is a value there, so I would just say that, in other words, there's a need to use every tool available.

The other point I want to ask is to you, Mr. La Course, and Ms. La France, have you considered sitting down with some of the reporters and editors and submitting to them material that has already been prepared and checked for accuracy, which means that all they would have to do would be a public service of just inserting it at certain points in the paper or on the television to do a public service announcement on a continuing kind of basis such as the civil defense does?

MR. LA COURSE. Commissioner Freeman, I believe that there are three tribes in Washington State who currently have their own public relations arms, and the fisheries commission of which Mr. Heckman is the director, has, I think, probably the most successful media contact operation in the United States. Perhaps that would be useful if he mentioned something about it.

MR. HECKMAN. Well, I hope there are some better ones. We think, no, we have a very competent one-person staff who works 28 hours every day and produces a newsletter, has been working vigorously in the school curriculum program to go along with the rest of the panel people here who are much more involved in that than I am; and the rest of her time, I think, has been spent mostly in trying to waltz the news media properly and get the information to them. Unfortunately, it usually ends up, she has little more time than to merely counter or attempt to counter, a lot of what we consider bad press, but to turn it back to Mr. La Course, he probably has the finest Indian newspaper in the Nation, and I think he could probably address the question as well.

MR. LA COURSE. I'm not sure I can. I think all, there are 36 tribes in Washington State, a number of urban communities of Indian people, and we don't look on ourselves as public relations people; we look at ourselves as journalists, so we don't do the work for other papers and we're not strictly a public relations approach arm.

There are such operations which provide photographs to newspapers, which provide background papers, and so forth, and that is a coming thing within the tribal picture and organizational picture

within the State, but I do not think that's a legitimate role or responsibility for tribal papers which take themselves seriously. I think they have to behave according to professional manners.

MR. HECKMAN. I have copies of the back issues of the Northwest Indian Fisheries Commission newsletter that I was asked to provide, and I can leave those with you today.

CHAIRMAN FLEMMING. Thank you very much. We'll, without objection, we'll include those in the record at this point.

COMMISSIONER FREEMAN. There's one last issue I wanted to pursue with respect to some apparent confusion about rights, property rights and rights of ownership. I have not seen any of the deeds to which some of the property owners referred, but is it correct or have any of you—is it correct that the deeds to the property do not reflect any restrictions as to ownership in the legal description, that they do not indicate that they are part of a tribal reservation?

MR. HECKMAN. I'm not sure I understand what your question is.

COMMISSIONER FREEMAN. We received some testimony from individuals who had bought property on tribal land and some of them did not know at the time that they bought the property, according to their testimony, that this was tribal land.

MR. OREIRO. You're making reference to the west coast area, southwest; that's not our area at all. I don't know anything about that.

COMMISSIONER FREEMAN. In your area, all of the property owners would know, would have a valid legal description of the property and any restrictions which would be.

MR. OREIRO. That's something from the curriculum standpoint, I'd like to get that information down for us. That's a good question. We'll deal with that now.

MR. LA COURSE. I would like to mention one thing about the Yakima Reservation. I learned a few things this weekend which are relevant to your question.

Part of the stimulus for the negotiation of treaties across Washington Territory were that the treaties be completed and the Northwest Railroad cross our area. The railroads again crossing in the late 1880s, and I think that this is perhaps the root of the legal problem you're touching on. Railroad companies winning rights-of-way crossed a number of reservations here in the Northwest, and being corporate firms, they permitted people to build stores and to build small homes in an area that was privately owned by a company. Within the period of approximately 20 years, there was platting further land after the Indian allotment era, and I think the questions you're asking cannot be specifically refined and proved except by a cadre of lawyers working on it for several months.

COMMISSIONER FREEMAN. Thank you. It just seems to me that it is an interesting point, that a historical perspective might make a good news story.

CHAIRMAN FLEMMING. Thank you all very much. I appreciate your being with us.

Counsel will call the next witnesses.

MR. ALEXANDER. Billy Frank, Russell Jim, Hank Adams, Ralph Johnson.

[Messrs. Adams, Frank, Jim, and Johnson were sworn.]

TESTIMONY OF HANK ADAMS, NATIONAL DIRECTOR, SURVIVAL OF AMERICAN INDIANS ASSOCIATION; BILL FRANK, JR., CHAIRMAN, NORTHWEST INDIAN FISH COMMISSION; RUSSELL JIM, COUNCILMAN, YAKIMA INDIAN NATION; AND RALPH JOHNSON, PROFESSOR OF LAW, UNIVERSITY OF WASHINGTON

MR. ALEXANDER. Starting with Mr. Frank, would you each introduce yourself by name and position.

MR. FRANK. My name is Bill Frank, Jr. I'm chairman of the Northwest Indian Fish Commission, council on the Nisqually Tribe, fish managing for the Nisqually Tribe, full-blooded Nisqually Indian and a little bit of a lot of other kinds of Indians.

MR. JIM. My name is Russell Jim, councilman for the Yakima Indian Nation, Post Office Box 632, Toppenish, Washington.

MR. ADAMS. Hank Adams, I'm national director of Survival of American Indians Association. I'm a member of the Assiniboine and Sioux tribes, Fort Peck, Montana. Post Office 719, Tacoma, Washington.

MR. JOHNSON. I'm Professor Ralph Johnson at the school of law, University of Washington. I teach Federal Indian law, Federal State Indian law at the University of Washington here in Seattle.

MR. ALEXANDER. Throughout the almost 2 days of hearings and specifically focused on in the previous panel, there have been a number of discussions about the information that the public operates with and how they get to the stage of either having misinformation or no information.

I would like to discuss some of the stereotypes and some of the myths we've heard both in the hearing and through a series of staff interviews around the State. One of the—starting with Mr. Jim and Mr. Frank, one of the things that does not seem to be understood, and I'm not sure I understand it, is the whole notion of separateness, that Indian people feel that they need to maintain a separate political system in order to survive. Could you both directly comment on that?

MR. JIM. Separate political system, I think it deals way back into your culture. In my religion, the Yakima Nation, they say that you have two roads to walk, one is the white man road, and the other he is the Indian road. You must learn them both well. They never cross but they parallel each other. I think this way you've got to learn both the Indian cultural religion, politics, and the mainstream of society's politics.

MR. ALEXANDER. Mr. Frank?

MR. FRANK. I think one of the main things that I've learned fighting for the fishing rights and different other rights in the Northwest is that nobody learned anything about us, us as Indian people and as human beings and our right here in the Northwest. They've taught us in school to move in this political whatever we call it and try to get us into the acting the way they do.

It is really hard for me to explain how I feel as an Indian person on the way the United States Government, the way the State of Washington, the way the citizens of this territory out here treat the Indian people. I really can't understand how it happens that way.

MR. ALEXANDER. Mr. Jim.

MR. JIM. Yes, if I may—the fish to the Yakimas and I'm sure to the majority of Indians throughout the Nation, especially in Washington, is more than just a dollar sign.

In my religion, they say that from the beginning of time, the Creator put the water on the earth and then he put fish, and each year, each spring, the first foods feast, we praise the fish as a—as one of the basic foods, so it means much, much more culturally to the Indian than it does to anyone else.

MR. ALEXANDER. Do you think it would be possible—to be very specific, we have had testimony from a number of State officials, from a number of private individuals that somehow feel it is inherently wrong for there to be distinct political communities, Indian tribes, along with the governments of the State of Washington or the County of Yakima or what-have-you. And although there are legal components to that discussion, some of these people said it wasn't their view, wasn't necessarily, some of the lawyers, their view wasn't necessarily a legal view, but more a political view. I would like to give you the opportunity to respond to those views, to have your point of view on those issues.

MR. JIM. I'm not sure I understand. Are you saying why we should practice something like, for instance our religion, and also, since there are so many other denominations trying to convert us?

MR. ALEXANDER. Religion, government, culture. We've heard many non-Indians say within the last several days it is somehow wrong. I don't necessarily understand how it is somehow wrong, but it is somehow wrong for there to be separate Indian tribes and separate governments. What I am asking is what your response to that is.

MR. JIM. Well, I must again revert back from the beginning of time when they say, we don't preach in our religion, we teach and advise. And the advice that has been handed down to us for hundreds and hundreds of years through this culture, the basis of that culture is around the religion.

From there you make yourself what you want to be, and if you are to change—if we were to develop into the mainstream of society, you would completely change me altogether, and you would forget what

had been taught to me all these years by my elders. My elders are my most important resource on my reservation. I must say that, for instance, jurisdiction plays a large role in the effect that we cannot fully punish our juveniles, not either from the mainstream side of the law or the Indian side of the law, and you have this gray area for these youngsters to walk in. It doesn't take them long to learn about this gray area and you cannot fully prosecute them, and they're not forced to do anything, they are not required to attend church or whatever, and we're raising a nation of culturally deprived people.

MR. ALEXANDER. Mr. Adams, from either a political view or a legal view, I know you were the chairman of the American Indian Policy Review Commission's Task Force on Trust Responsibility and have done a significant amount of historical legal work. What is the response to the notion of separate Indian governments? What is the historical reality of that issue?

MR. ADAMS. What is the response when?

MR. ALEXANDER. Your response.

MR. ADAMS. When people say it is wrong?

MR. ALEXANDER. Yes, your response.

MR. ADAMS. Well, I think that it is a statement that is blind to realities of the human experience. A human experience can be seen around the world today where there are many both racially and ethnically, culturally distinct peoples, and you find it pretty much confined to Indian people on North and South American continents. That people are saying, no, these people don't have a right to a political existence or a distinct cultural existence. I think it is both blind to the realities of the human experience and blind to the experience of history.

I think, speaking of the tribes of this area, they are fishing societies and have always been fishing societies, but that's not an unique experience around the world. There are other fishing societies in other parts of the world, and there are fishing societies or there are white societies in fact who have grown and prospered primarily as fishing societies, but here you have the social-political pressures saying, no, these people cannot be fishermen any more. These people cannot be fishing societies; culturally, politically, legally, they have to be something else.

MR. ALEXANDER. Mr. Johnson, from—Professor Johnson, I'm sorry—from the perspective of American constitutional law and Supreme Court decisions, is it valid that Indian tribes are recognized as governmental units and were governmental units before the existence of the United States?

MR. JOHNSON. There's no question about that. As a matter of fact, one of the things that constantly is distressing is the fact that non-Indian society wishes that treaties, that statutes, that other legal documents would simply go away. The Indians did not create the legal structure within which we operate; they have had to operate within that. They have learned, especially in recent years, fairly

ably, how to operate within that system, and that's been a very important factor. But the white man created the system.

It, I think, it is unseemly at the present time when the Indian comes in that system, fights the kind of war that the white man wishes, the white man sets all the rules, the Indian wins occasionally, and the white man says there must be something wrong, we shouldn't have those treaties, those are all wrong, we really ought to go back and do something different.

Another interesting thing that really bothers me immensely is the way we cavalierly say that Indian treaties are old and they are really out of date. Well, the United States Constitution was sometime in the late 1700s. The treaty establishing the border between the United States and Canada, was in 1846, and we still recognize that. There are many, many treaties around that we still think are perfectly valid legal documents, but treaties with Indians, they are too old and they really shouldn't be recognized any more. Besides, which, as I say, they have been upheld in the courts time and time and time again.

The United States Supreme Court is not made up of Indians; it is probably not made up of people that know Indians very much. But the fact is they have upheld Indian sovereignty. They have sometimes said it is a qualified sovereignty. They haven't held for the Indians in every case, but they have held very clearly that Indians do have legal rights, they have sovereignty rights, they have treaty rights, and it seems to me that the first thing we ought to do is live within our own legal system.

MR. ALEXANDER. Mr. Adams, would you like to comment on that at all, in terms of the trust responsibility and the state of Federal Indian law?

MR. ADAMS. On the trust responsibility that, as Professor Johnson has indicated, is another element of a legal system that has been imposed upon Indian people, or that the Indian people have come under or within.

The basic or the broad elements of the trust relationship that exist is one in which the United States has both pledged and promised its protections to the lives of Indian people, and this is a diverse type of life among many Indian peoples, ranging from Eskimos who might survive on Yowhead whale to farmers in the Southwest as opposed to fishermen here in the Northwest.

The basic obligation of that trust is to allow the resources, first, of the Indian people themselves, to serve the needs of Indian people, and secondly, to offer the resources of the larger nation to Indian people to make certain that this is a good existence, a good life, and that it is secure. It has the security that all people have a right to, whether they be Indians, Israelis, Arabs, or whatever.

The trust relationship has not been clearly defined. It has taken a number of forms in the history of Indian-white relations since the first arrival of non-Indians some 500 years ago and settlement a

hundred or so years after that. In some of the early periods, non-Indian settlements, colonies, towns, even States, were living under the protection of Indian nations. Pennsylvania grew into one of the most viable communities and self-governing communities under the protection of the Six Nations between the 1500s and early 1700s and right up to the time of the American revolution. Non-Indians were living under protection of Indian nations. There was no question about the political character and the national existence of those tribes or those Indian nations. It was readily accepted and relied on for the survival of non-Indian communities trying to build their own nations on this land.

MR. ALEXANDER. Mr. Jim, in tying that in, in a sense, because getting into living under the jurisdiction of an Indian tribe, staff interviews in and about the Yakima area, one of the commonly expressed fears was, this is a paraphrase, that from non-Indians, that when the tables are turned back again and Indians are in control, that the white community in essence would be paid back for all the bad deeds of the past 200 years. It is not something that people say in public a lot, but it is something you hear around the community very frequently. I would like to ask you to respond too that.

MR. JIM. Sure. Arrow shirts again. Well, I think not only are they afraid in one sense, but they never bring out the help that we do give them, to the non-Indian community. For instance, not only during this drought here, but just about as far back as I can remember, we have people that have tried to dominate our water supply. The Bureau of Reclamation that has to do with the Yakima project has wanted to control and administer all the water on the Yakima watershed. Through the treaty we have staved off the Bureau of Reclamation and retained our right to control and administer our own water. We have asserted our sovereignty. We have developed and adopted a water code, a law-and-order code. I must say we have a very good law-and-order bunch, as you probably know, who testified before you today.

I would like very much like to see non-Indian communities, the people that live within the realm of the Yakima Indian Nation get up and say, "If it wasn't for the Yakima Nation and their fight for their water, some of us would probably be without water today, especially during the drought year."

MR. ALEXANDER. Mr. Frank, would you like to comment on the previous questions, comments, and perhaps fears of some of the people in the State?

MR. FRANK. One of the things on the non-Indian that's moving into the area on the reservations, on my particular reservation—it's happening all over the Northwest and the whole country—is that, Mr. Jim talks about a good code and a good ordinance that has been wrote up now. One of our problems is the footdragging that has gone on in the United States bureaucracy from Washington, D.C., clear

down to the area offices on getting ordinances drawn up for Indian people. We have a continual problem—now, these are smaller tribes that I'm talking about and there are continually problems going on to implement the Boldt decision on self-regulatory status. We have, it looks to me, like a termination thing going on.

As far as the United States Government is concerned clear down to the State of Washington, the citizens in the State of Washington, we have a hard time getting our enrollments up to date as Indian governments. We have a hard time getting things adopted by the BIA.

We continually have problems on non-Indians moving into the areas. We continually have problems with the State of Washington on zoning around the reservation. Some reservations don't have any land and are trying to, at this time, acquire some land for housing and other developments so their Indian people can live near the reservation or adjacent to the reservation. These lands are being held up by not putting them into trust immediately, and we continually, seems like, get into a court battle with the citizens of the State of Washington, the State, and we go on for years like this.

The State of Washington, some of the people you had here before us, the non-Indians, probably have testified that you cannot split two people to live in the same State, the Indian people and non-Indian, either we're all going to have to be white or we're all going to be Indian. To me we're all going to be Indians, because the white people haven't shown me too much as far as saving this resource in the State of Washington and all over the United States, and it won't be long and Alaska will be the same way.

These are problems that the Indian people face, immediate problems. We have the news media. We have problems there. We have the American Bar Association. I blame them. I blame the clergymen or the priests or whoever preaches every Sunday to their people about the Treaty of Medicine Creek, and the different treaties all over the United States how they've been—they don't even know about them. They don't even know. They talk about the Panama Treaty and these other treaties all over the world. They don't know that in their backyard there's a treaty right there that's being violated, in their backyard, your back door. Your neighbor right down there is an Indian, he's got a treaty and he's a human being. The President goes around talking about human rights. These are our problems, our individual Indian problems in different areas.

We have problems just stacked up. I would like to have been here for 2 days and listen to these things, but just because we're trying to protect our treaty right we cannot be here for 2 days.

We've just got to sit down for an hour and go on to trying to protect our right again. These are problems that arise with not only me, but everyone of these Indian people. We have attorneys that do not—attorneys in the last 15 years, one just came up to me the day before

yesterday, when Judge Boldt was in the hearing, he came up and said he was leaving because he had got burned out.

I told him, you know, "Hey that's really good, because, you know, you're only about the 15th attorney that they burnt out." The United States Government, the State of Washington. You know, I of all people can understand this because there's no goal for you as a non-Indian attorney, because it never ends. You keep hitting that wall. If you could look at 5 years, we'd be right here, it would be different. But you don't look at 5 years. You just keep hitting that wall. You got to leave, I understand that, but I'll be here. I'm an Indian, and I live right here and I will be here. I'll be here at the next hearing we have. I'll be at the hearing we're going to have in D.C. I'll be here every time that we will have one of these hearings and every time we have a non-Indian before us or after us or whatever, and the news media, we'll all be here, and the Indian people is not leaving.

The managers, the Indian managers right now from the Columbia River in the Case area and the Puget Sound area is managing for every citizen of this area. The State of Washington did not manage for the Indian people. They managed around the Indian to take this right away from us, on enhancement, on—they completely, went completely around every management thing that the Indian people has done.

This is the situation. It is a bad situation we're in right now. I don't even know in some cases whether we can save some of these resources that the State of Washington has destroyed. The task force is coming down and recommending to the United States, the President of the United States, he is recommending—he already abrogated the Treaty of Medicine Creek and got involved in the Boldt decision. That is one thing that has already been done.

The Indian people lived with that in the year of 1977. They live with that because they understand the law, but right now in the State of Washington, the citizens of the State of Washington are a bunch of lawless people in this State. They do whatever they damn please to the resource that is right out of our door right here in Puget Sound.

The Coast Guard, the United States Government, and all their marshals cannot control these people. These are the people that we have controlling us, whether we like it or not. These are the people that we have controlling us. And they want us to be part of them? Well, I hope we'll never be part of them.

MR. ALEXANDER. Would any of you like to comment on Mr. Frank's statement? Mr. Adams?

MR. ADAMS. Just briefly. I would like to refer back to the question of the antiquity of treaties, you know, they are no good because they are so old.

I think, you know, that Mr. Johnson answered that effectively, but the problems in the fishing industry are not new problems, but they have intensified more in the past 15 years than at any comparable

period or preceding period of the State's history, and some of the court actions—the Boldt decision was issued on February 12, 1974. There's been 3 years on the part of some people trying to have it implemented, and a more massive effort to make certain that it might never be implemented or ultimately be defeated, but there are other court cases, like on Puyallup River and Nisqually River, that have been in process or in the courts—the same cases—since the early sixties.

I would like you to perhaps refer to hearings that were held in 1964 by the Congress of the United States on resolutions—Senate Resolutions 170 and 171, which were proposals either to transfer Indian treaty fishing rights under the regulation of the State or to alternatively buy out all Indian fishing rights. Those were sponsored in the Senate by the senior Senator from the State of Washington, Senator Warren Magnuson, with the support of the junior Senator, Henry Jackson. In the House of Representatives, at that time, the companion bills had been introduced by former golf great Jack Wesslyn from Everett, who was subsequently replaced by Congressman Lloyd Meeds. In the period that Lloyd Meeds has been in the Congress, more or less, coincides with the most unhealthy situation developing in the commercial salmon fishing industry of this State.

There has been a real strong adverse reaction to Judge Boldt's decree that the resource—the salmon resource should be split 50-50 between Indians and non-Indians under the treaty. That reaction has not occurred when, during the past 13 years, dozen years, the most massive increase in the commercial fishing industry has occurred by an entry of new non-Indians becoming commercial fishermen.

From less than 3,500 commercial fishermen in the water in 1962, in that same period you have seen the number of non-Indian fishing units increase to over 6,500. So that was a division of that resource among themselves. They split it 50-50, three times in that period. Why not another split?

The problem has been that the people have been able to use the Indians as a smokescreen or as a scapegoat to hide the real problems in the commercial fishing industry. There is a historic national obligation for a nation to develop and protect its food resources, whether that be agriculture, probably first, agriculture, secondly, fish resources.

There's a national obligation recognized down into ancient times for a nation to maintain healthy fishing industries, and the State of Washington has ignored, abdicated this obligation and responsibility, and has set out in the name of every type of conceivable label from equal rights to equal opportunity to first, devastate the resources, the fish resources in this area, and secondly, or incidentally to that, to try to destroy the Indian people of this area, the Indian people who have always been fishing societies here.

There is no equality when a people who have an established right such as fishing, recognized with relation to water, recognized in other forms of property ownership, for another people to come along and displace them, for in the past, say, 15 years, to add 4,000 additional non-Indian commercial fishermen and say that each of them has the right to make an adequate living from that resource before an Indian can get on the water. This is not just, and it is an abomination of any sense of equality.

One of the problems is, having talked about what white people don't know about Indians is bad enough, but what white people don't know about themselves, their own history, I'm glad the United States was born 200 years ago because it was—it was born at a moment in man's experience that couldn't be repeated today.

If the United States was born today, it would probably not be tolerated by the other nations of the earth. Why can't, you know, the people be taught what Thomas Jefferson thought about Indians or George Washington thought about Indians? George Washington, this State is his namesake, and he talked about, you know, protecting Indians and being just to Indians, as being the one thing that would preserve undecaying luster on the national character. This State has betrayed that philosophy. It does it in those—in the name of those words that should mean something like equality, like justice.

MR. ALEXANDER. Hearing what both of you stated and from staff interviews, a continuing fight that you have day in and day out, the number of times in court, and you said if we held the hearing 3 years from now, you'd be back. From where comes the optimism, if it is optimism, to keep going?

MR. JIM. It kind of comes from cultural heritage, sir. Again, I must refer back to what I am and what I have learned, what the old people have taught you, and to give up would make the fight of my forefathers in vain. Our culture didn't start from 1855 when the treaty was made, and it didn't start when the Boldt decision was made; it started from 1855 back to the beginning of time.

MR. ALEXANDER. Thank you, I have no further questions at this time.

CHAIRMAN FLEMMING. First of all, I want to recognize the fact that one member of this panel and I have two things in common, one, we know Eugene, Oregon, and, two, we know the University of Oregon. I think it is fairly safe to say that in the State of Washington, and today, in view of the fact that the annual Oregon-Washington game is behind us, and when people in Washington feel rather positive about it.

Before I ask any questions I would like to recognize my colleague, Commissioner Freeman, who I know has a number of questions that she'd like to address.

COMMISSIONER FREEMAN. Yes. Professor Johnson, I would like to pursue certain legal questions that have come forth during the course of this hearing. The first, I would like, if you would speak to

the possible pending legislation for the abrogation of treaties and the implications of that as to the land ownership.

MR. JOHNSON. If you're referring to the legislation, I believe introduced by Representative Cunningham, that would abrogate all treaties, I can only say that is one of the more ridiculous pieces of legislation—and I say that advisedly—that I know of. Congress has several thousands of bills introduced every year. Most of them don't see anything more than the introduction of the bill, and they die, and I think it is a certainty that that bill will die in that way. It is not because it doesn't express a backlash feeling because there's a widespread backlash feeling against Indian people which, again, appalls me because we talk about Indians being supercitizens and I would like to find a number of supercitizens that were so impoverished. I don't quite understand that.

COMMISSIONER FREEMAN. That was the next question. I was going to ask if you would speak to the attorney general's designation of the Indian as supercitizen?

MR. JOHNSON. I would like to finish the first question, one other comment; that is, as far as abrogating all treaty rights, it is infinitely more complex than that. A bill to do that, as I say, is ridiculous because it deals with a very, very complex question in a terribly simplistic way.

Secondly, it would cost, even Senator Jackson suggested casually that it would cost between 200 and 500 billions of dollars to do that. The Indians are entitled to compensation, if treaty rights are taken away. I don't think there's any chance that the United States would do that.

Returning to the second question, are Indians supercitizens? Well, the answer is they have certain legal rights. I wonder if Bill Boeing is considered to be a supercitizen because he owns property or Rockefeller or the Kennedys or somebody is a supercitizen because they are indeed rich. They have contract rights, they have all kinds of legal rights, they have statutorily protected Federal rights and States rights; they are not considered supercitizens. The Indian community is an impoverished community; it still is in spite of what people think about fishing rights and such, and a few other favorable decisions of the courts. But the fact is that they are vastly away from being supercitizens.

They have legal rights. They have treaty rights which have been recognized by the courts, and I think that the point should be made that the fight over the nature of those treaty rights is one that properly should occur in the courts. It is not one that should be expressed in the political forum where a majority of citizens can tyrannize a minority. That's the whole point; we should not have that kind of action going on in this country.

COMMISSIONER FREEMAN. Professor Johnson, I don't know if you were here, but there's also quite a bit testimony from non-Indian property owners, some of whom stated that they had purchased

property in areas that they did not know, in some instances was tribal land. It would be helpful for this record if you could describe the kind of deed. Apparently there's something unique about their deeds that's different from the legal descriptions that I followed, but if you will at least describe for the record what is usually put into a legal description in a deed and what restrictions are usually put there.

MR. JOHNSON. The legal descriptions in most of the deeds probably say nothing about an Indian reservation. The fact is that until fairly recently title insurance companies as well as other local agencies preferred that Indian reservations go away. They did not recognize them as encumbrances upon the titles of the people who purchased lands on the reservation. That's a large generalization. In some cases they were there; in some cases they were not.

Probably what's more important is the fact that when a person moved onto an Indian reservation, they knew or they should have known or they could have known had they inquired that they were moving onto a Indian reservation. I don't mean to suggest that there has been a lack of good faith by the non-Indian community. I don't think that's true in most cases at all. I think that it is a very difficult issue where people, non-Indians, did move onto Indian reservations, many of them without the slightest real knowledge or practical way of obtaining that knowledge that they were thereby subject to Indian jurisdiction.

One reason that comes about is that Indian people have and still have legal power to exercise a broad spectrum of jurisdiction, water rights, zoning, health, sanitation, all kinds of things except where it's been specifically taken away by Congress.

But, in fact, they have not exercised that jurisdiction over many, many years. There are a variety of reasons for that. Now, when we find that they are, for a variety of reasons, again, they are beginning to exercise that jurisdiction, it does pose some very difficult questions to the non-Indians on the reservation.

It is not a one-sided problem, and I think my own feeling is that, one, the Indian communities have the legal power to impose it. I find that many Indian groups I'm dealing with are exercising great restraint in the exercise of that power. They are not going out of their way to be difficult, to impose an unjust jurisdiction; they are trying very hard to work out something in almost all cases in the non-Indian communities, and I think there's going to be a period of promise that will have to be approached.

COMMISSIONER FREEMAN. I notice that you have done a great deal of research in the area of Indian law, and I want to ask if your research includes the question of whether the failure to exercise jurisdiction diminishes that jurisdiction in any way? Is there any parallel with this and the concept of adverse possession?

MR. JOHNSON. Well, yes, there is some parallel. The question in adverse possession, you cannot, for example—the State government

that owns land out in the wilderness—if I go and settle on that land and live on it for 20 or 30 or 50 years, title does not go to me; it still belongs to the State. The State has not lost its sovereignty, its jurisdiction, its ownership of that land. Sovereignty and jurisdiction are things that the Indian tribes do not lose by lack of exercise. There are many other analogies in our legal system, but it is very clear, and the courts have so held, I'm not creating this, I mean, the courts have so held that Indian sovereignty, Indian legal power, is not diminished, is not denied because it has not been exercised.

I might add one thing, that there has been a constantly expressed fear, both here in these hearings and many non-Indian people that I have consulted with and tried to advise on their situations as well, a fear by people living on reservations that they will, one, be taxed when Indians are not taxed or they will have zoning laws imposed on them when the Indians are not zoned, and, therefore, they'll be kicked off the reservation. I heard that from one of the people on the Quinault Reservation this morning. In fact, that cannot occur. There are several reasons why it cannot, and it is surprising that that knowledge is not more widely known.

In 1968 Congress passed the Indian Civil Rights Act. The Indian Civil Rights Act even includes the due process delays and the equal protection clause. Those are clauses that non-Indians are familiar with out of the Bill of Rights. An Indian tribal government cannot pass a law that taxes non-Indians any differently than an Indian. Now, they simply can't do it, and one of the first things that would happen if they tried is the tribal judge.

I worked with all the tribal judges of the Pacific Northwest, Alaska. We have a very extensive training program for tribal judges, 20 to 30 days a year, that they go through constitutional law, treaty law, all the rest of it. The tribal judge, my guess is, would strike down such a tribal law, much as a Federal judge or State judge would do in a non-Indian society.

Second, if it got past the tribal judge, if they didn't see that or made an error, it would go to the Federal court and the Federal court would strike it down.

Although there might have been a legitimate fear prior to 1968, as of the present time there should be no justified fear that a non-Indian would be taxed or zoned or anything else in a way that is different than the Indian community. It would be struck down as being in violation of Federal law.

COMMISSIONER FREEMAN. The final point that I would like to make and inquire about is the obvious need for dissemination of the information that you have just described, and I would like to ask you if you, your university, or if you have any suggestions as to how that could be done, or one-plus-one is two sort of manual so that even the blind could see that because, obviously, there is a lot of confusion, and there can be a lot of harm done by misconceptions without regard to whether it is true or not.

MR. JOHNSON. In the first place, I heartily concur in what you're saying. The misconceptions that exist in even the widely read public in the city of Seattle, the community that knows lots of things, you know, about lots of different subjects. The conceptions that they have about Indians, Indian rights, legal questions involved, is really appalling many times.

The first thing we have to do, I mean we may end up in an argument, that's the nature of the human animal, but at least we ought to know what the rules are, what are the givens, and I don't have any firm suggestions.

I think that some responsible kind of literature has to keep coming out, some studies. I don't mean the esoteric kind of tomes, but some studies that are available to a wide public spectrum need to be made, for example, zoning questions, the legal rights of non-Indians.

I don't know, I suppose it is like the other panelists have said, you have to keep at it and keep at it and keep at it. I don't think there's any single solution. I will, however, give a good deal further thought to the question you posed. I think it is the most challenging of all the questions.

COMMISSIONER FREEMAN. Mr. Frank, did you have some response?

MR. FRANK. The only response that I have is—and I just want to put this in the record—the attorney that told me he was leaving has gone to Europe and I said, it is kind of late to be leaving now, but the main thing that I want to put in the record is that we do, as Indian people, realize we're all here. I don't care what color you are. We are here, and if at some day we'll be able to sit down and talk to each other without having a judge or a jury to go to and decide for us different things, I think we'll all be in better shape.

CHAIRMAN FLEMMING. We have, as a Commission on Civil Rights, of course, been deeply involved in the issue of the desegregation of the public school systems of this country, and, as we have conducted public hearings, as we have engaged in studies, we have become very much aware of the fact that there are those who in one way or another try to hold out hope to people that somehow or other they can just duck the issue of desegregation. They talk about alternatives to this, that, and the other thing, and these hopes have been sometimes heightened by statements made by persons in very high positions in the government. Whenever that happens, then the opposition to desegregation is heightened because people think, well, if we hold out long enough, something is going to happen that will make it unnecessary for us to really come to grips with it.

I don't know whether my analogy is completely correct or not, but as I have listened to testimony the last 2 days, and, as I have heard persons talk about abrogating treaties, it has seemed to me that the same process may be at work. I have felt myself that clearly is not a viable option for a great many reasons, yet apparently people advance it, advance it seriously or apparently in a serious manner. In so doing, it seems to me, they impede the process under which the

tribal governments, persons living on the reservations, the county governments, and other governmental units will step by step carry on a dialogue with one another and keep resolving this issue, that issue, and another issue in a positive manner.

We have had some evidence, as you know, of that kind of a process being under way and some constructive results being achieved, but, Mr. Johnson, I'd appreciate your reaction to that reaction on my part as I have listened to the testimony here and then linked it up with this other basic issue that we've been dealing with.

MR. JOHNSON. I find it extremely unfortunate, for example, the reaction of what otherwise are considered fairly responsible, sometimes quite responsible public issues on the fishing rights issue. I think it borders on or is indeed demagoguery. I think people who inflame the emotions of the fishing industry suggesting to them that the treaties shouldn't be here, that Indians are supercitizens, that Indians are catching all the fish, that Indians are destroying the fish runs, they are not factually accurate. The only reason I can think that these people do this is either, one, out of a fundamental lack of understanding, a fundamental misinformation on their part, or that they know what they're doing and they are doing it out of the demagogic reasons, and that is they wish to retain the support of the voters or whatever. The Indian community is a very tiny minority in terms of population.

For a long time we blamed the Japanese for the fishing industry problems. Then we blamed the Russians' big trawler fleets off the coast and, of course, the experts knew neither the Japanese nor the Russians were having an impact on it. Now, we want to blame the Indians. It is easier to blame someone else than to realize that the problem is us, and to face up to that problem, to face up to the excessive equipment in the industry, to the political hassles that are going on in the industry, but again it isn't only the fishing industry. The other fact that I think is really important here is that the fishing industry is very important to the Indian communities, to the State of Washington. The salmon fishing industry is peanuts, economically. I can't give you the figures—you can ask an economist and they will tell you it is a very piddling industry, but somehow it is the tail that is wagging the economic dog of this State. Politicians are running scared as heck. It is very difficult to understand how that happens, but I think it certainly is true.

CHAIRMAN FLEMMING. May I say I referred to the fact I have known Professor Johnson, and I have known of his commitment and dedication to the field of Indian law and the outstanding reputation he has, and I'm delighted that he is here as a panelist today.

Would you deal with one other argument: if you were here this morning you heard it, taxation without representation.

MR. JOHNSON. Well, again I refer to the Civil Rights Act of 1968, which provides that taxes will not be imposed upon non-Indians unless they are also imposed upon Indians. I think we can sit around

all day and hypothesize about something that might happen, you know, is it possible that the United States Government, for example, I can tell you that the United States Government has the legal power to take over all water rights in the State of Washington without payment of compensation, and I can scare the water people to death by that. And yet I sit back and think that's ridiculous, why should I say that, they aren't going to do—let's deal in the real world.

The Indian community is not about to tax all these people this way. Again, there are very practical reasons they don't want to do that. The Indian people are trying very hard to get along with the non-Indian community. The resistance to compromise, to the negotiation, comes from the State and local officials, not from the Indian community and I can repeat that many times over. I know many instances where the Indian communities have legal rights they are not asserting because they're saying, let's cooperate. They get nothing from the other side.

Well, the taxation question, though, again, the civil rights says if you tax the Indian then you must also tax the non-Indian the same way. I must say the Indian people are very much, in spite of my good friends to the right, here, they're very much like non-Indians in that respect, and that is none of them like to be taxed any more than I like to be taxed, so they are not going to adopt taxes, for many reasons, but among others, they will have to tax themselves. And if they don't do so, their laws would be struck down. So I suggest that it is an unreal problem. It is a theoretical problem; it is not something that is not real anywhere in the country. I don't think it behooves us to worry very much about a problem that isn't here.

CHAIRMAN FLEMMING. As a former citizen of the State of Oregon, I used to come to Washington, and I used to pay sales tax.

MR. JOHNSON. I should have mentioned that, too, in fact, if you go to another's jurisdiction you pay the taxes of that jurisdiction. And if those taxes are legitimately collected for appropriate purposes—that is, they are not used for private aggrandizement of the public officials—then if you come to Washington, you pay taxes which provide services in that community, and those services you may benefit a lot from or a little bit from. It depends whether or not you need a fire engine on a given day. You may think it is a very good deal if you have a fire going.

CHAIRMAN FLEMMING. Throughout these hearings, the issue of education and the role that the field of education can and should play has come up time and again. We just had another panel ahead of yours, dealing with the whole problem of communication which really is the problem of education. In your judgment—let me put it this way—what are the postsecondary educational institutions doing in the State of Washington in an effort to make a constructive contribution to what is obviously a serious problem both in the educational and communication point of view?

MR. JOHNSON. Well, because of the initiative and assertiveness and imagination of a group of Indian students at the university a few years ago, the University of Washington responded by establishing an Indian studies program which has been quite successful. It has been, though, I think, an extremely modest effort in terms of educating the—it provides opportunities for those who are interested in Indian affairs. It does not reach the mass of people that are simply not interested, couldn't care less, and when the issue comes up sort of instinctively come down on the wrong side of it.

I think the universities are trying to respond modestly to the question. I don't think, though, there's any real effort at public education. The educational television programs have made some effort in that direction, and they should be recognized for that in providing the Indian side of the story, but it is an extremely modest effort. I really do not know—well, I urge the Commission to publicize that fact, that here again I don't think there's anything wrong with a bona fide conflict over, you know, real vital interests. After all that's the way we all operate, that's the political spectrum. We ought to be dealing with facts, not myths, that simply stop any legitimate discussion in this area.

CHAIRMAN FLEMMING. Well, thousands of citizens of this State take courses in political science or government sometime during their lives. Do you have the feeling that the political science departments, the departments of government at the varied educational institutions are giving attention to, for example, the issues of tribal government and their implications or the implications of tribal government as far as the life in the State is concerned?

MR. JOHNSON. I think the answer to that is clearly no. The political science departments throughout the State of Washington, at least the ones I am familiar with, the other departments simply have no knowledge of this area. I would not cite particular people but people unnamed who should know a great deal about Indian affairs, about treaties, about the political relationship of Indians and non-Indians, know absolutely zero about it. It is not that, as I say, I disagree with them, you simply can't talk with them because they have no knowledge of it. It is a very depressing kind of situation when you really have the people who should be the intellectual leaders of the community not providing that intellectual leadership.

CHAIRMAN FLEMMING. Is there a citizens group of any kind in the State that recognizes something like this along with the other issues we've been talking about and is trying to provide leadership, trying to shake up State government and so on?

MR. JOHNSON. There's some small hope. We've seen leadership by the American Friends Service Committee for a long time. Organizations like the American Civil Liberties Union are badly split because some of the members see this as a violation of civil liberties because of Indian treaty rights. Others are just extremely hostile the other way, so essentially, the ACLU is largely neutralized on the question.

CHAIRMAN FLEMMING. Could you—I'm interested in that, what is the cause of the split there?

MR. JOHNSON. The cause of the split is that there are members of the American Civil Liberties Union who tend to look primarily at the civil rights of individuals, and Indians work by tribal operation. There's obviously an immense importance to the tribe, to the race, to that background, and so many ACLU members cannot really understand that and they fight that, so they want to work toward the individual, toward the destruction of the tribe. They want assimilation, in a sense, they want everybody to be equal, but also in that process to destroy the tribal relationship. So as I say, as far as Indians are concerned, the ACLU is usually a neutralized body. If I were to look around and, say, point the finger at some hope in some direction, I suppose I would note that—well, obviously, the greatest hope is in the Indian community itself in the sense of self-determination of purpose which is becoming clearer, I think, all the time.

But, aside from that, in the non-Indian community you have a very able and imaginative group of young and middle-aged lawyers now who know a great deal about the subject and are willing to get on it, although once in a while someone will go to Europe or something, basically—they may need a little break—but basically, they are very knowledgable. Whereas 15 years ago there were, I don't know, I suppose it might be generous to say five lawyers in the State who knew really anything about Indian legal problems, about treaties, about all of this, at the present time, you have a cadre of probably 30 or 40 or maybe more than that, that know—well, it would be more than that. Last year I had a class at the law school, about 40 students in that area and you have those, and then you have people who are working in the area and these people turn out to be in a sense community leaders and educators. Each time they go out in the community, they tend to educate.

CHAIRMAN FLEMMING. What's the approach of the Legal Services Corporation to the problem?

MR. JOHNSON. The Legal Services Corporation is very much involved in Indian affairs. They have a legal service office which has about four or five lawyers who do almost entirely Indian legal problems. They do excellent work as far as I'm concerned, both with individuals and tribes. They have had a group, a small group of them are associated with Small Tribes of Western Washington, the organization that provides services to the smaller tribes in this area and they worked very closely with those.

In addition, I think one of the important innovations is that you now have legal counsel operating on the reservation, not some city lawyer living in Seattle that occasionally at a very high price, and maybe that's helpful too, I don't mean to deny that, but you have young people that are going out and living on the reservation,

sharing the Indian community life and participating in it, providing legal service on the reservation.

Now, they do at least two major functions. They provide a sort of legal advice to the tribal councils all the time. They also provide defense counsel and prosecutors before Indian tribal courts. I can't emphasize enough that a lot of people simply don't understand that Indians have tribal courts, they have jurisdiction, they have the power to punish, they have the power to decide civil cases and they are doing so, and they are doing so in very credible ways. I go out and I watch these trials and besides working with the judges, and I see people that I guess on balance I would as soon, if not prefer, to be tried before one of the Indian judges now that is really getting extensive training as I would before a rural justice of the peace. There are about 100 nonlawyer, non-Indians—that is, State court judges in the State of Washington who are nonlawyers, okay. The Indians have maybe 15 or 20 in the State of Washington. There's really not much difference except the Indian judges are far better trained in general than the non-Indian, nonlawyer judges.

CHAIRMAN FLEMMING. Do you notice an increase in the number of members of the American Indian community that come into law school?

MR. JOHNSON. There's been a very distinct increase and a very distinct increase in their feeling about Indianness. I think we're all beautiful for our own purpose, black is beautiful, Indian is beautiful, I hope that my parents and I think that I am the same way, and I think that's the kind of a society that we ought to have, that we share each others' pride in what we are and who we are, but, yes, there are many more Indian students now coming into law school.

We have on average, I think at the present time we have six or seven Indian students in the law school which is an incredible increase from a few years ago, when we would have one once in a great while.

CHAIRMAN FLEMMING. Do any of the other members of the panel care to comment on some of the issues I've been discussing with Professor Johnson, particularly the role of the educational institutions in the State helping to deal positively with some of these issues?

MR. ADAMS. Just briefly I would like to refute any impression that the legal needs of the tribes of this or any other area are being met by a sufficiency of onhand attorneys or of funding from any source. That simply is not true, and while the Legal Services Corporation has been involved somewhat, it scarcely touches the problems and the needs for legal services and attorneys here in this area or elsewhere.

CHAIRMAN FLEMMING. Along that line, I gather from some of our earlier testimony that some of the grants that are being made by LEAA to the tribal governments are proving to be helpful. Is that a fair statement?

MR. ADAMS. Yes, but again there's a problem of deficiency and noneligibility for a lot of very essential needs or purposes. So when it comes through it is helpful, but it is very spotty and certainly not consistently available to all tribes and all Indian communities having the needs.

CHAIRMAN FLEMMING. Mr. Jim?

MR. JIM. Yes, sir. I can see it will be very difficult to, educationwise, teach a non-Indian all about Indians. Were I to go to another country, I would respect their culture. I could not impose myself on them, and would not, and there are many do's and don'ts in any culture. When people come to the reservation, I try to advise them if they're going to work for the nation, learn about these do's and don'ts because of their culture. If you're going to live in my community for many, many years, why not learn some of this so you will understand? In this way, I wouldn't be dubbed as a supercitizen with so many. I borrowed this suit to come here and tried to infiltrate, but under oath I had to reveal my true identity. I have faith, sir, in the legal system that we have, and that will help us prevail in what we would try to convey to you. It is very indepth, if they would come to our reservation—for instance, if you or a non-Indian saw my religion being performed for the first time, you would say, "How quaint, how paganistic. I wonder what they are worshipping, a rock, tree, how many gods?" Not too long ago by an official, "How many gods do you worship?" We have one, the creator of all things. This logic of the uninformed is what must be whipped somehow or other.

CHAIRMAN FLEMMING. Thank you. Mr. Frank.

MR. FRANK. Mr. Chairman, I just comment on a few of the lawyers speaking for the Nisqually Tribe and probably one of the poorest tribes around the country as far as any resources is concerned. We do get certain grants kind of handed down to us by the Federal Government or other agencies too, for attorney fees, but there are so many strings attached to these attorneys. They are not effective in ways that we would like to use these attorneys.

Now—

CHAIRMAN FLEMMING. You regard that as a defect in the Federal legislation?

MR. FRANK. Yes. As far as—we got so many immediate things happening to an Indian country, to Indian people, and if you're not financially—we have a lot of young lawyers like Mr. Johnson had been talking about in the last—when I started the fight, there were no lawyers. Like Mr. Johnson said there was only about five lawyers, and you had to lay down a fee to them before they'd even talk to you. Along came quite a few lawyers, but these lawyers that I'm talking about that maybe charge their fee—it isn't the full amount or something, whatever we're talking about, these people have got to be educated the way we want them to represent us.

Through this representation—through this educational thing that we've got going, the university can't educate these Indians, these lawyers. We've got to educate them, the Indian right there on the reservation. By the time you do get these lawyers educated, then they're off, they're gone, they are burned out, because the system does not work for the Indian people. The State courts of the State of Washington are a bunch of racist people, the State supreme court. I know most all them judges from the superior court where they started. I know every one of them. I know the superior court judges right now that's handing down these decisions that's going on right here in the Northwest. They were young kids and now they're superior court judges.

You'll stay a superior court judge or a supreme court judge only if you will rule against these Indian people as far as fishing rights are concerned. You'll become a State legislator or a State senator or whatever as long as you do not take a stand for the Indian people on the fishing rights. Mr. Slade Gorton who testified yesterday, who is a State attorney general, his ground work probably—and in the future he will probably take over Magnuson's place. These things we cannot stop as long as this political system is set up such. These are the things that start from attorneys to whatever we're talking about and it gets right back to recommendations that the task force recommends to the President of the United States and he recommends to the Congress, and whatever this Indian from Yakima puts down on a piece of paper, this Indian from Nisqually, this Indian from Lummi, or them Indians over there or whoever scrambles this paper up and it comes in front of the congressional people and then I say, "Hey I'm down here at the southern Puget Sound, I never even haven't got 1 percent of this 50 percent fish." I never even wrote that, but somebody along this line has wrote these papers together and now it ends up that Indian people don't have anything.

These are the worries that we have.

CHAIRMAN FLEMMING. We appreciate your being with us, and the testimony from the panel has been very, very helpful as we confront these issues. Thank you all very, very much. Counsel will call the next witnesses.

MR. ALEXANDER. Alvin Ziontz, Howard Gray, Elizabeth Furse, James Johnson.

[Ms. Furse and Messrs. Gray, Johnson, and Ziontz were sworn.]

TESTIMONY OF ELIZABETH FURSE, STAFF PERSON, WESTERN WASHINGTON INDIAN PROGRAM, AMERICAN FRIENDS SERVICE COMMITTEE; HOWARD GRAY, DOCUMENTARY FILM PRODUCER AND MEMBER, NATIONAL BOARD OF DIRECTORS, INTERSTATE CONGRESS FOR EQUAL RIGHTS AND RESPONSIBILITIES; JAMES JOHNSON, SENIOR ASSISTANT ATTORNEY, STATE OF WASHINGTON; AND ALVIN ZIONTZ, ATTORNEY AND MEMBER OF THE NATIONAL INDIAN COMMITTEE OF THE ACLU

CHAIRMAN FLEMMING. Nice to have you with us.

MR. ALEXANDER. Starting with Mr. Ziontz, would you each identify yourself, and the name of this panel is national organizations that are non-Indian organizations basically that have been involved in Indian issues, and any such organization that you belong to.

MR. ZIONTZ. Alvin Ziontz. I'm a lawyer here in Seattle, and I and my firm have represented Indian tribes here in the Northwest since 1964, and we have been involved in this litigation that's been referred to, the fishing litigation as well as other kinds.

I am also a member of the National Indian Rights Committee of the American Civil Liberties Union. Although I'm not a board member of the national or local board, I was on the State board for some years.

MR. GRAY. My name is Howard Gray. I reside at 9001 22d NW, Seattle, Washington. I live resided in Seattle for the past 41 years and have produced outgoing documentary films for the past 25 years. As an independent producer I have documented Pacific salmon for the Washington State Department of Fisheries. In this capacity I've been able to witness the gradual depletion of our great runs. I served 18 years on the International Salmon Fisheries Commission Advisory Commission, and by international treaty this commission was formed to ensure the proper escapement and the division of the sockeye salmon. While on—I think that would conclude my introduction.

MR. ALEXANDER. When our staff interviewed you, Mr. Gray, you also indicated that you were involved in an organization known as the Interstate Congress for Equal Rights and Responsibilities, which has an active interest in Indian affairs; is that correct?

MR. GRAY. That is right. I'm Washington State delegate and on the national board of directors for the Interstate Congress for Equal Rights and Responsibilities.

MR. ALEXANDER. Ms. Furse?

MS. FURSE. My name is Elizabeth Furse. I'm a staff person for the American Friends Service Committee. I am a staff person of the Western Washington Indian program of the American Friends Committee, which is a pacifist organization founded in 1917 and has been involved in Indian matters since 1957 in the State of Washington. I am also a board member of the National Coalition to Support Indian Treaties.

MR. ALEXANDER. I would like to indicate for the record that Mr. Johnson was not originally scheduled to be on this panel but originally scheduled to appear yesterday morning, but due to a court commitment we rearranged the schedule.

MR. JOHNSON. I would like to express my appreciation for that, to all the members of the Commission, for the rescheduling. My name is James Johnson. My official capacity, I am senior assistant attorney for the State of Washington, assigned to represent that State's fisheries and game departments, which includes litigation involving, among other things, treaty hunting and fishing rights of Indians. As a preparatory comment I would note they have been working in that capacity since 1974 just at the time or after the trial and the Boldt decision, so I did not try that case but have been actively involved in other cases involving those matters ever since. Just one last comment, because I am on this panel and to my knowledge, I am not a member of any non-Indian organization at all so I'm kind of stuck in here, as you have noted, because of my inability to be here yesterday.

MR. ALEXANDER. Mr. Gray, could you tell us the interstate congress, which I gather, is a relatively new organization, is it not—

MR. GRAY. Yes, it is, may I interject that in addition to my own remarks, I have two exhibits here that I would—one of which is prepared by Blair Reichendeifer, who is the chairman of the board of the interstate congress, and I also have an exhibit to a statement prepared by Betty Morris, a resident of the Quinault Reservation, which details the abuses heaped upon Elmer Milner, a resident of the Quinault Reservation. I would like to submit these to you and I would like to later comment on the Milner case, if you will accept these as part of my—

MR. ALEXANDER. Accept it for the record.

CHAIRMAN FLEMMING. Without objection they will be entered in the record at this point.

MR. ALEXANDER. Can I ask you some questions, which is our format, sir?

MR. GRAY. Yes.

MR. ALEXANDER. Why was the interstate congress formed; what is it responding to?

MR. GRAY. I will give you the—my initial information and activity in this respect was from the Boldt decision. It seems, as the information went around the country quite fluently and I was called to Montana to give a discussion of the Boldt decision on the provision that I would listen to the problems of the people of the White Foot Reservation. I went to Polson, Montana and—

MR. ALEXANDER. The what reservation?

MR. GRAY. The Flathead Reservation.

MR. ALEXANDER. Thank you.

MR. GRAY. I'm thinking of Blackfeet. At that meeting, there were 2,000 residents, and after my discussion about the Boldt decision, and

listening to their problems, we came to the conclusion that there was mutual problems and what we were to do about it. There was a young attorney from South Dakota that was implicated in the Wounded Knee, Tom Tobin. After that meeting, we decided there's problems in South Dakota, there's problems in Montana, and Washington, let's find out where the other problems are. We spent 6 months investigating, writing letters, taking trips, and on February 2, 1976, we met in Salt Lake City, Utah, in which there was representatives from 10 Western States that were vitally interested in the problems mostly of Indian jurisdiction. These representatives were schoolteachers, they were attorneys, they were State representatives, they were mayors of small towns, they were a cross section of the population. We listened, we recorded, and from that grew the interstate congress, and since that time, fortunately and unfortunately, from the standpoint of the east coast, which you are very familiar with, Maine and Massachusetts, we now have 18 States.

We are all interested only in one thing, and contrary to the belief of a lot of the people, we are absolutely not—we are not non-Indian, we are not anti-Indian. We have many Indians in our organization, allottees that are very much disturbed about what's going on in the tribal reservations.

MR. ALEXANDER. What do you seek to achieve, Mr. Gray?

MR. GRAY. We seek achieve just one thing, that is equal rights for all people living under the Constitution of the United States and the 14th amendment, and we feel that it is almost impossible to have a dual citizenship. If our Indian friends would like sovereignty, that's one thing. If they like to be citizens, that's another thing, and if they're citizens we can't see any reason in the world why they should not abide by the Constitution of the United States which the 14th amendment gives equal rights for all people; that's all we're requesting for.

MR. ALEXANDER. Mr. Ziontz, as I understand it, the argument or statement that Mr. Gray just made about the 14th amendment and the notion that the status of Indian tribes in the American legal system somehow is a deprivation of the equal protection of the laws was argued to the American Civil Liberties Union and, in your capacity, would—you analyzed that from a lawyer's point of view. Would you care to comment?

MR. ZIONTZ. Yes, there is in general, as a matter of principle, there is no conflict whatever between Indian treaty rights and the 14th amendment, none whatever. The 14th amendment says simply that if you're going to have different treatment of different groups, there must be a rational basis for that difference. There is obviously a rational basis for the separate treatment of Indian groups, and that basis is the transactions which they made with this nation. They have in effect entered into a contract, and it is no more a denial of my 14th amendment rights that Indians continue to receive the benefits of the agreement they made than it is a denial of any rights

that any group that sold land to the United States Government gets paid for their land. So that's simply in my view nonsense. The American Civil Liberties Union does not feel there is any 14th amendment question whatever in upholding Indian treaties and perhaps this is a good point at which to take issue with what Professor Johnson says.

I hold him in high regard, but I don't think he's in close contact with what the American Civil Liberties Union has been doing or what its position is. The union has adopted, as a matter of national policy, a commitment to support and uphold Indian treaties. There is a sharp difference within the organization when specific cases involving the question of rights of individuals versus the rights of their tribes come up, but I think it is quite wrong to say that the union is in any way moving towards or interested in dismantling the tribal structure. Quite the contrary, the union is committed to preservation of that structure.

MR. ALEXANDER. Mr. Johnson, you are also an attorney, you have represented the State, I gather, in treaty cases, I would assume something in Indian law. Could you point to any Supreme Court decision that would indicate that the existence of tribal governments and treaties are a violation of the 14th amendment?

MR. JOHNSON. I think the question more goes to whether the distinction between, for example, let's face it, on the water of the State of Washington today, there are certain people who can fish and certain people who cannot fish. The question is does that distinction, the basis under which that distinction is made constitutional or unconstitutional?

MR. ALEXANDER. Did the State have the opportunity in the Federal district court or the circuit court to argue that point of view? Could you point to any case to support that?

MR. JOHNSON. Yes, I can, and if I could, let me conclude those comments. I obviously have the same kind of conflicts. I represent a client here and I am an advocate, and here I think Mr. Ziontz has some conflict between his position as an attorney and that as a member of the civil rights union. Yes, there are such cases. The Washington State Supreme Court has specifically ruled on two recent cases that this distinction that is being made in the waters of the State of Washington is unconstitutional because it is based on race or ethnic background. Now, where you're dealing with recognized tribes, recognized by the Federal Government, the argument is that there is then a political relationship between those two entities. However, Judge Boldt himself has issued orders which set forth qualifications for fishing by what he says are treaty Indians, but who are not recognized by the Government which you represent, and I can read you a portion of that order; it is dated 19th March.

MR. ALEXANDER. If we could submit that for the record, because time is short?

MR. JOHNSON. The significant portion here, Mr. Alexander, is that he does in fact grant rights to those who are not members of recognized tribes. This order requires that they come forward and prove their blood quantum, and as I say, there I think it is a little more difficult to sustain the analysis that it is a political relationship with the tribes that gives them this right, rather than their race. As I say, the State supreme court has ruled that that is not constitutional. It is a decision which will, I believe, be submitted to review by the United States Supreme Court and I am as hopeful, as I am sure Mr. Ziontz and this panel is, that that determination will be made by the highest court of the land eventually.

MR. ALEXANDER. But on the general question of the treaty rights, leaving aside the issue of recognition, which is a side issue, and there are different kinds of decisions coming out of other courts inferior to the United States Supreme Court. As a general proposition, as a lawyer, under the 14th amendment, are you aware of any case where it has been held that tribal status, the fact that the Indian tribes are political sovereign units, is somehow a violation of the 14th amendment?

MR. JOHNSON. I am aware of no case nor am I aware of any United States Supreme Court case which has held that the classification for fishing purposes, for example—

MR. ALEXANDER. I wasn't asking you—

MR. JOHNSON. —is not such a violation.

MR. ALEXANDER. I was not asking you about fishing cases.

MR. JOHNSON. That's about my field of expertise.

MR. ALEXANDER. We'll get to some fishing cases. Ms. Furse, what—your organization, the National Coalition to Support Indian Treaties, I believe, what is the purpose of that and when was it organized and what need did you feel you were meeting, if any?

MS. FURSE. Well, I think I would like to talk about the coalition and also how that fits in with my work in the American Friends Service Committee because that is a somewhat old organization. Principally I think the two things go together, my work in the American Friends Committee and the commitment of the American Friends Committee has been to self-determination of people to make their own future, to decide what is proper for them, particularly in cultures that are different from the majority culture.

One of the things that has been lacking in the State of Washington and the thing that has concerned myself personally, and the service committee, has been the incredible lack of information, of educational material, because what has happened is that a whole generation, two generations of people in this State—I know the other panels have discussed this but I would like to reiterate—at least two generations in this State of people have been raised without any knowledge, first of all, what the article 6 of the United States Constitution says, the special rights, the supreme right of treaty. Article 6, I don't imagine any school child or university student

would be able to repeat that article and understand it, and yet we are living very constantly with people who are dealing with exactly that article of the United States Constitution, so the service committee has been very concerned there hasn't been very good education.

We are also very concerned with State officials who are making statements, who have made statements over the last 4 years, particularly, that have provided much more heat than light, and Assistant Attorney General Mr. Johnson had made statements about the Boldt decision which might—of course, my organization, the American Friends Service, did protest because we felt that it was wrong to determine a case such as the *United States v. Washington* case as unfair. We felt that in fact, the judge had decided. We felt that was again lack of information, so we've worked really hard to try and work with tribes to be a kind of a voice of reason, if that's possible in this conflict.

Out of our concern, and a concern of other people in this State, for the honor of the United States citizens in keeping of treaties, we joined together to make this organization, so we are now to the national coalition, and the organization's aim and goal is to educate. We feel that we could do some of that by being non-Indians and going out and talking about the treaties.

MR. ALEXANDER. When staff spoke to you several weeks ago, you explained a very recent story which in terms of the fears of non-Indians on some of the reservations and a phone call that you had received. Could you repeat that for me as one of the kinds of goals of your organization?

MS. FURSE. Yes. Congressman Cunningham put his bill into the United States Congress. The coalition presented a press release in which we said that we opposed any such legislation to abrogate the treaties. My name was in that press release and a comment. I received a phone call from a gentleman who lived on a reservation in western Washington, a non-Indian. He was extremely angry. He told me I didn't know anything about treaties and how could I support treaties. He was very, very upset and very, very angry.

I had an opportunity to talk to him over about 40 minutes—we had a very long telephone conversation. It turned out he was an elderly person, had bought a land, fee-patent land on a reservation, had built a house. He was concerned, he had heard all these things, taxation without representation, all the kind of unfortunate things that get into the media, and after I explained to him about the 1968 Civil Rights Act, about the due process, about the fact that tribal courts all have due process, that he had the right to appeal to a Federal court. After I explained all those things to him he said to me, "It's really amazing, I've never heard any of this before." I asked him if he would go and talk to the tribal council, that they had attorneys who would be willing to talk to him. He said he had never been to a

tribal council, and at the end of our conversation he said to me, with a laugh, but I think he really felt a lot better, he said, "Well, I might like living on the Indian law better than the State law."

So we really do believe that there are a lot of people who are just uninformed, and who really would be supportive of keeping treaties if they were informed.

MR. ALEXANDER. Mr. Gray, I'm sure you want to comment?

MR. GRAY. Is this mike on?

MR. ALEXANDER. Yes, it is.

MR. GRAY. There's been a great deal of discussion here about the jurisdiction of Indians on non-Indians on reservations, and I would like to clarify one thing that seems to be in everybody's mind. There's a definite confusion that comes from the Department of Interior, as a matter of fact, and I would read you one statement of a letter that was written in March 28, 1977, which says: "If a non-Indian sees fit to purchase land within the exterior boundaries of an Indian reservation, he does so with the full knowledge that he can occupy the land for residence or business only by permission of the Indian Tribe." Pursuant to that, a letter from the Department of Interior, the question of whether tribes as a fundamental attribute of their sovereignty may exercise jurisdiction over nonmembers or non-Indians' property within the boundaries of the reservation is an issue which the Department has under consideration.

This is our one main problem that we have throughout this entire area. We, all of the people that own this land, there are 50.5 million acres of land in these United States owned by Indians. Within this there are 5 million acres, that it was not stolen, it was bought, it was homesteaded, and it belongs to people, fee-patent land. It is this land that we want to keep and we do not want to be harassed; we want to have that land and we want to have all the rights to that land that anybody else has. We don't want any part of the Indians' land that is there, but when that land was purchased at the turn of the century, families have grown up there—other families—this land is theirs and I'm sure that there's got to be some justice, and if this is not settled, gentlemen, we are in for a tremendous amount of trouble in the future.

MR. ALEXANDER. You say that you are talking about 5 million out of 50 million acres? What are your proposed solutions again?

MR. GRAY. Our proposed solution is this, that that land—now let me use an example the Quinault Reservation. The Quinault Reservation, the tribe owns 4,000 acres. One hundred twenty-six thousand acres is allotted land, that was allotted to individual Indians of several tribes. At the expiration of that allotted time, some of the tribes wanted to move and they were given permission to sell their property to non-Indians. Now, the same law that gives the allottees gives the permission to non-Indians to buy this land. Now, this is the land on this particular reservation that we are interested

in. It is the land we're talking about. It is the land you're trying to tax.

MR. ALEXANDER. Are you a landowner there?

MR. GRAY. No, I am not a landowner.

MR. ALEXANDER. But what is your proposed solution? You say that you are worried about this 5 million out of 50 million acres of land that are owned by non-Indians, and you propose what?

MR. GRAY. Well, I think the proposal—let me give you an example. Are you familiar with the *Roosevelt* case in South Dakota? All right. That went through the courts for 5 years and finally the Supreme Court with a six to three decision stated that that land that was purchased by non-Indians disestablished that land, and, therefore, was no part of that reservation. Now, Justice [Thurgood] Marshall who dissented stated himself this is going to open the question all over the country about reservation lands of non-Indians who own fee-patent land. There's no question that it will, but can we wait long enough to go through court after court after court, and the only solution is legislation.

MR. ALEXANDER. Do you think the openings were the same at Quinault as they were at Rosebud, the situation, the statute?

MR. GRAY. Granted, there are statutes, laws slightly different all over the United States, there are laws in Montana, the homesteading is a little different, but primarily, I think you'll find that this land that was sold is going to run into the same category as that of South Dakota. I don't see any other way, but it will not come about very fast because, if it is going to take case after case and this turmoil that we're going through today keeps existing, we can't live together and there's no reason why we can't live together." The gentleman here says, "We're Indian and we're here." Well, I'm sorry to tell you people, us non-Indians are here too, and you've got to live with us, and why can't we get along. We don't want anything that belongs to Indians, but we want the rights that we have by legal procedures.

MR. ALEXANDER. Mr. Ziontz, would you like to comment?

MR. ZIONTZ. Yes. Their concern for everybody getting what they're entitled to which is encouraging because I think the Indian has been waiting for a very long time to be given the ability to exercise just those same rights, and this, the birth of this organization, which is dedicated to ensuring Indians equal rights, should not mislead anyone in its statement of goals. It intends to dismantle Indian reservations, destroy them, to ensure that Indians have no special rights, thereby putting the final seal on an active wrongdoing that has stained our national record. Now, I would say that while Mr. Gray and his organization feel that they are not going to be fairly treated by Indians, that is really something that has yet to be

shown. I know about these affidavits and there are people who have horror stories that they are telling about bad treatment at the hands of Indian government, but I also know that there are hundreds of non-Indians who are enjoying the benefits of Indian government in rural areas that had no government before Indian governments began to function, and I say that advisedly.

Local counties, and these county governments and their staffs were minimal. Law enforcement was sparse. Zoning, planning, land use, was a catch-as-catch-can basis, and now the tribes are beginning to flex their muscles and exercise these powers, services are being extended to non-Indians in Indian country, and they benefit from these services. I can tell you in western Washington there are many residents of reservations that the quality of governmental services is better now than it ever was. It is not such a one-sided picture. I think the point that is overlooked by these organizations is that they don't fool the Indians, although they might have some allottees on their membership. Their aims are quite clearcut: it used to be called termination. That's precisely what it is. Now it is a movement of property landowners, water right owners, to terminate Indians because Indian rights have now been enforced in the courts.

CHAIRMAN FLEMMING. Ms. Furse?

MS. FURSE. One of the things I would like to respond to, also, is that it has never been a concept that owning a piece of property gives you citizenship. If I own a piece of land in France, I expect to be protected by French law, but I do not expect to vote in French governments. And another point I'd like to also point out, just through our experience in the service committee when Indian people were being arrested on the rivers constantly, nets being taken from them, trials that were very, very expensive—finally, the court acted responsibly, upheld the treaty, and now we hear all over the State, and all over this country, "Well, the court has decided in favor of the treaty and in favor of the Constitution, so we'll go a legislative route. We will destroy the treaty." And now, as a non-Indian, I just don't think that is the way this country was built. I don't think we just decide that we did not like the court's decision and so we go another route. I'm really concerned at seeing that kind of propaganda being put out instead of good clear facts which people will respond to because they do, I've have experience on that.

So I think that the idea of the living on the reservation is a shibboleth. I think the people who did live on reservations who are non-Indians are fully protected, but they obviously cannot vote in a tribal election—that's just right and legal.

MR. ALEXANDER. Mr. Gray, other than the right to vote, what rights are you talking about?

MR. GRAY. Well, let's take another area. Let's take the area of the water rights as an example. In March of this year Secretary Andrus put out a water code published in the *Federal Register*. I

think you're familiar with it, that is stated in 30 days he'll have a water code which gives the tribes complete—

MR. ALEXANDER. That was not the question, sir.

MR. GRAY. What I'm getting at is, the fact that the non-Indian, the farmers in eastern Washington that owned this land are not given the proper consideration. If the code should go through, and I'll tell you one thing, when I get a call from eastern Washington from a farmer that says to me, "Mr. Gray, if this code goes out I have to go to the Yakima Tribe and beg for my water and dicker with that tribe," and I says yes, my authority will be at the end of the shotgun. Now, this is bad.

MR. ALEXANDER. What did you say to that?

MR. GRAY. This is in eastern Washington.

MR. ALEXANDER. What do you say to someone?

MR. GRAY. What do you say to someone else like that?

MR. ALEXANDER. Have you asked him to see what happens if he calls the Yakima Nation on the phone to discuss it?

MR. GRAY. Why should he call the Yakima Reservation? Look, water is no man's property, and this water cannot be dictated by any one single entity. Governor Ray in our State completely went against this code and said you should go by the water codes of the State of Washington and that doesn't give the tribes complete domination over these waters. That's just another area in which there is not equal rights on this. It's just not the right thing.

MR. ALEXANDER. One short question. Mr. Gray, I gather you are heavily involved in this area. Have you studied Indian law or where do you get your facts and background from?

MR. GRAY. I'm not an attorney, but I will say that I've been involved in this for the last 2 years. I didn't think I'd ever go back to school but I finally did. Now, I can't quote the legal aspect of this. I can take the contents of it, which is common sense. I mean, I don't have to be an attorney to understand the meaning of some of these things that we're talking about.

MR. ALEXANDER. But I just want to indicate what our staff report indicated, when you perhaps were not here the first thing yesterday morning, that Federal Indian law is unique. It doesn't have analogies to regular civil rights law or to land use property law. It is something generally outside the experience of most Americans and certainly most American lawyers who haven't specifically studied it.

MR. GRAY. Would you tell this to some of the people who live on these 5 million acres whose water that they don't have control over? You tell this to some of these people and tell them some of these legal aspect and they don't understand any more than I do. They understand the common sense of it.

MR. ALEXANDER. Mr. Ziontz, so that we can perhaps have a clear record as to what some of the Federal Indian law is, would you like to comment on the water rights statement just made?

MR. ZIONTZ. Yes, I don't think it is a surprise to western water lawyers that Indians have special water rights, and I would say that any lawyer that is practicing law in a county where water is an important property right ought to be sued for malpractice if he doesn't know about the *Winters* doctrine, a doctrine which the United States Supreme Court laid down in, I believe, 1906, and it is a right that is well established which says that Indians' rights to water is prior and paramount, and the common sense of it may or may not be there, but I have a feeling that the people who are now shouting that they don't want to hear about these things, it is not entirely because they're ignorant or have been misled, it is because it is—it would upset the status quo, namely, their use of Indian water if those rights were to be enforced.

I don't mean to discount entirely what Mr. Gray says. There are indeed thousands of non-Indians who live in Indian country who have lived in total ignorance of the existence of tribal rights and for that I blame the United States Government, which has not only done a terrible job of informing the public, it has done an even worse job of suppressing Indian rights and not enforcing them so that, as in the area of fishing rights, these rights were ignored, and the Indian had to risk going to jail if they wanted to exercise them because the United States didn't lift a finger to help them until 1965. So the United States bears a very heavy responsibility here, and if there are people who live in these reservations who are discovering these things now and are shocked, I think the Federal Government owes them the responsibility of dealing with that problem.

I would like to make one further comment, and that I think is, I haven't heard it mentioned here, Mr. Gray and his organization protests the existence of Indian governments. Indian government was not created in 1964 by any act of Congress. It was not created by any Federal law. It was not created by any law of the State certainly. It preexisted the foundation of this government. We understand very well, we are taught in our civics classes, that this is a Federal system. We have a national government and we have State governments, and we have dual citizenship, it might surprise Mr. Gray to know. We are citizens of the State of Washington and also citizens of the United States, and we find nothing contradictory about that.

The problem is that there are three governmental entities in the United States, not two: The Indian governments are a third and they are recognized as such in the United States Constitution. In the commerce clause it provides that the Congress of the United States shall have the power to regulate commerce among the several States and among the Indian nations, and Indian nations have survived down to the present time, have governmental power; they have been prevented, prohibited, and suppressed in trying to exercise governmental powers, but they exist.

The United States Supreme Court has ruled that Congress, and this is referring now to the *Mauzie* case just a couple years ago, Congress has the right to delegate to an Indian tribal government the power to prohibit liquor on a reservation. These tribal governments have the same status any State government has in their capacity to govern their territory. There are problems, I don't say there won't be, but it's misleading and silly to pretend that Indian government doesn't exist; it does.

MR. GRAY. May I answer that, please? I don't think that at any time I've suggested that we have no Indian government. I don't think that there's been a suggestion of that in this topic at all. I think that the Indian government should exist, but I think it should exist in the land in which they own, and in the case of some of these reservations, like the Quinault, they have the 4,000 acres which is the tribe, and if that other land has been disestablished, which it will be eventually, I don't think that government should be over those other people. I have no intention whatsoever of trying to dissolve Indian government. I think they exist and they should exist. I just want to make it clear.

MR. ALEXANDER. The booklet, *Are We Giving America Back to the Indians?* which I believe the Interstate and yourself had something to do with it, does it not take the position of abrogating treaties and the Federal trust relationship?

MR. GRAY. I believe there might be a chapter or a statement in there to that effect.

MR. ALEXANDER. Well?

MR. GRAY. Yes. If you have read that, I don't think if you absorb the entire booklet which I produced myself, I don't think you will find anything in there that would suggest complete abrogation. As a matter of fact, I believe the original Indian citizen would be better off if the treaty was abrogated, and this statement that is made by Senators Jackson and Magnuson that it could cost billions of dollars, what do you think we're paying today? It wouldn't cost this country another red penny to give every Indian to his property free and clear, not one penny more than we're paying today. I don't advocate because I think it would an impossibility, but it certainly could be accomplished.

MR. ALEXANDER. Mr. Johnson, I just wanted to—from your perspective of the description of the status of tribal sovereignty,

United States Supreme Court law, is that also your understanding of the state of the law?

MR. JOHNSON. No, I think, Mr. Ziontz and Miss Furse have inaccurately stated the law. Her analysis of someone going on an Indian reservation as being the same as someone moving to France is entirely inaccurate, I believe, and so, too, Mr. Ziontz' suggestion that the Indian nations, Indian tribes on the reservations enjoy the same status as an independent sovereign. I think the recent analysis from the United States Supreme Court, which I have read, speaks instead of terms of areas in which the United States Government has preempted, for example, State law. The *Mauzie* case of which Mr. Ziontz spoke was a situation by the way in which the State was also exercising jurisdiction over the same activities.

I think it is an overstatement to claim that you're moving to France when you have bought land on the Quinault Reservation. The situation is a lot more difficult, as you know. You're right, it is a unique area of law, it is a difficult one to understand, and the same thing, by the way, is true of the water rights questions which Mr. Ziontz—it is not as clear as the water itself, that's why Mr. Ziontz is in court on numerous occasions in order to clarify the law. Maybe that's not a very hopeful answer, but I do disagree with the characterization of it as being the same kind of sovereigns as foreign nations, first. Yes, I do disagree with that and I do believe that the Supreme Court in its recent analyses of the status of the tribes has spoken instead of preemption of certain areas of control.

MR. ALEXANDER. But still we can recognize tribal governments as at least quasi-sovereign units, political entities, would you agree with that?

MR. JOHNSON. I think that's true. They exercise the kind of governmental authority that is similar to, I'm not saying the same, as municipal, the same.

MR. ALEXANDER. You're not saying they are not governments?

MR. JOHNSON. Certainly not.

MR. ALEXANDER. Are they governments to the extent that the State should be dealing with them as governments with relationship to the fishing controversy?

MR. JOHNSON. Well, we have to deal with them as parties in the court. That's where I play the game. And there it is clear in the Federal Court, for example, the cases in which I participate, that they have jurisdiction, authority, but only over their own members. They are not exercising authority over nonmembers.

MR. ALEXANDER. I would like to give you an opportunity to respond to what Ms. Furse said, and let's first see if it is correct, that you are one of the State officials that have added to the perhaps public emotion or the heat of the argument by labeling the decision of the Federal district court in *United States v. The State of Washington* has immoral or outrageous; are those accurate quotes?

MR. JOHNSON. I don't recall ever using either of those two particular words.

MR. ALEXANDER. What did you say?

MR. JOHNSON. But I have characterized it as being unconstitutional. I have suggested a long-term solution for all of our citizens is a return to a status of equal rights as specified in the 14th amendment, a situation, and I particularly am distressed by religious organizations whom I believe—I think the statement was once made by a Justice of the Supreme Court that the Constitution is colorblind and believe that religious people should believe that God is colorblind. I have said and I state it here, a long-term solution is the same thing that I believe this Commission will set up to get to, I see a fully integrated society with everyone having equal rights.

MR. ALEXANDER. Is that eventual abrogation and termination of Indian tribes and treaties? Is that long term?

MR. JOHNSON. I don't think so. That is a long time, particularly as regards these treaties with which I'm concerned in this litigation. The State supreme court has analyzed them differently from the way Judge Boldt has, and—

MR. ALEXANDER. You have sort of moved back to fish rights, the long-term solution for the controversies and everything that we've been—

MR. JOHNSON. Sorry.

MR. ALEXANDER. —talking about is that for everybody in the society to be treated equally. Politically, are we talking about just fishing rights or are we talking about all the issues? The Council of Tribal Governments testified yesterday that there were at least nine major issues of controversy that they wished to discuss with the State. Mr. Slate Gorton said negotiations, even if in litigation, were perfectly appropriate.

MR. JOHNSON. You know that as an attorney as well as I. I am not familiar about the whole range of the issues that were presented by the Tribal Council of Government. I am familiar with the issues with which I deal. Those I—again I can repeat myself, that an eventual solution to avoid distrust or hatred on behalf of any of our citizens is a situation of equal protection, everyone being treated equally. In fact, let me pass one anecdote that I did to your examiners. Ms. Furse gave us about a man calling her; I can tell you one about one of the fishermen's wives, a group of them, actually met with the delegation, as you know. The husband of one of those wives was a recently—

became naturalized, voted the first time in the last election. He, in the course of doing so, must know, must learn to read the Constitution, supposed to understand it to pass it. He thinks he does so and he is now moving away from this country by virtue that he is being deprived of his opportunities to participate in the occupation which is the only occupation for which he trained, that is fishing, and I think that's an equal tragedy.

CHAIRMAN FLEMMING. May I, Mr. Johnson, ask this question. Reference has been made to the decision by Judge Boldt, the decision has been affirmed on appeal.

MR. JOHNSON. That's accurate, Chairman Flemming.

CHAIRMAN FLEMMING. Including action on the part of the Supreme Court?

MR. JOHNSON. That is not true, the Supreme Court has never considered the case, only declined to issue a writ of *certiorari*. In legal terms that has no decision.

CHAIRMAN FLEMMING. I understand the point, but they had the opportunity of bringing it up and having oral argument on it and making a decision for whatever reasons, they don't assign reasons, they passed up that opportunity, so that Judge Boldt's decision is the law of the land.

MR. JOHNSON. It is the law of the land to be binding on, for example, the State supreme court, all the courts must be enunciated by the State supreme court. I share your concern and I find it incredibly unfortunate that the United States Supreme Court has not heard this controversy. One part of the problem there, Chairman Flemming, is that the United States Government asked them not to hear it, and I say to you, if they were sure the analysis was accurate, and they did want to make it binding as the law of the land, they should have the Supreme Court hear and affirm it. It is unfortunate that, I told the Ninth Circuit yesterday, we have 12 additional appeals from matters arising out of the same controversy, there are numerous cases in the State supreme court, and there are prosecutions and people who question whether they will be subject themselves to criminal actions in State courts, even in the Federal courts. It is a controversy that if it will be resolved judicially it will only be at the level of the United States Supreme Court and has not yet occurred.

CHAIRMAN FLEMMING. Mr. Ziontz.

MR. ZIONTZ. I would like to say something at this point that I think Mr. Johnson in all fairness owes it to the public to make clear, and that is that this argument which we now hear much of, that the extension of fishing rights, treaty rights to Indians is a deprivation of constitutional rights of non-Indians was an argument never made by

the State of Washington in the Federal court in *United States v. Washington* by Mr. Johnson or anyone else. Indeed, the State fisheries department took the position in the United States court that it certainly was bound to accord Indians separate treatment and it was prepared to do so and its position in that court was that the Indians should receive one-third of the total fish resource available to be harvested, and the decision of Judge Boldt was that it should be one-half. I think it was only when the political reaction set in that it now has become a matter of constitutional concern to the attorney general's office. They made no argument of denial of constitutional rights or constitutional impropriety in the Federal district court or the Ninth Circuit Court.

MR. JOHNSON. Mr. Ziontz, could I respond to that? As I stated at the beginning, I did not try or argue the Boldt case. However, I believe Mr. Ziontz is totally inaccurate. The position of the State game department was to the supreme court on at least two, possibly three occasions, including the last time and was in *Puyallup III* at the Boldt case, as I recall it, that there should be equal treatment of the citizens as regards harvest of steelhead trout. Again, I did note to the extent if they were not raised they should be raised.

CHAIRMAN FLEMMING. May I say, this is a question of fact and the records, we have all there is available in our files, to look at it and determine as a question of fact.

I would like to ask Ms. Furse what response you have had from leaders in the life of the State to the development of the national coalition that, as I understand it, you and the Friends Service Committee are undertaking to bring together?

MS. FURSE. Well, principally we've been talking with church groups, groups who traditionally have had a sense of morality, so we've kind of worked with church groups and civil rights groups. We've had quite a good response. Am I answering your question directly?

CHAIRMAN FLEMMING. Yes.

MS. FURSE. We have had a good response here in the State of Washington. It's going to be slow because it is always slow to get groups together. We also have had some response which I think is quite favorable on a national level in Philadelphia and in New York and in Washington, D.C. So what we propose to be is educational and I think that in itself is what has made the response quite strong.

CHAIRMAN FLEMMING. Thank you all very much. May I express our appreciation to you for coming and presenting this testimony and responding to our questions.

MR. JOHNSON. Excuse me, Chairman Flemming, I don't want to overlook it, there was some information which I was asked to provide, and I have records of conservation closures and believe, gentlemen, it is complete—we do close sports fishing as well as we do Indians together with the record, and I wanted to put this on the record as to the fisheries department—we do keep records of

citations for violations of fisheries regulations as to Indian and non-Indian. Those records are not kept separately by the game people, they tell me in the thousands of citations made in a year, an insignificant number of Indians, but they don't keep those records. The record will disclose that last year some 860 citations were issued against non-Indians and only 26 against Indians.

CHAIRMAN FLEMMING. We appreciate your supplying the information as requested and it will be entered in the record at this particular point. Thank you all very much. We appreciate it.

We'll be in recess for 5 minutes.

CHAIRMAN FLEMMING. I'll call the meeting to order again and I will ask the General Counsel to introduce an official from the Department of Interior, who has a statement to read.

MR. BACA. Mr. Chairman, I would like to introduce Mr. John Hough, who is a member of the Federal task force which is dealing with the case of the *United States v. Washington*. Mr. John Hough is with the Department of the Interior. Mr. Hough.

**STATEMENT OF JOHN HOUGH, MEMBER OF THE WASHINGTON STATE
FISHERIES TASK FORCE**

MR. HOUGH. Mr. Chairman, I represent a three-member Federal task force given the responsibility of dealing with the Indian fishing dilemma here in the Northwest. On behalf of that task force I would like to submit a short statement and then be willing to answer whatever questions you might have.

The Washington State Fisheries Task Force was created in March 1977 to develop solutions to the many interrelated problems which exist in the salmon industry and salmon management. The most controversial problem is the implementation of Indian treaty fishing rights as defined in *United States v. Oregon* and *United States v. Washington*. These decisions and the response to them by the parties involved in the fisheries have generated a series of confrontations on the fishing grounds, and in the State and Federal courtrooms. The task force draws on the three Departments that have been most intimately involved, Justice, Commerce, and Interior. The Cabinet Secretaries and the Attorney General selected a subcabinet officer to be their working representative in Washington, D.C., and selected the individuals who serve on the regional team.

The regional team was charged with achieving a settlement of the fishing controversy within the four guidelines listed below. The first is the optimum utilization of the fisheries resource, including Federal assistance for fisheries enhancement. The second is a healthy commercial and sports fishery that will provide an opportunity for all who depend on salmon fishing for their livelihood to earn

a good living. The third is a utilization of the fishery consistent with the recognized treaty fishing rights reserved under the Stevens treaties of 1854 and 1855, and lastly, the development of management systems that will ensure that the salmon fishery is preserved and developed so as to satisfy points one through three.

The regional team has one member from each of the three agencies and assembled a staff of Federal personnel from the three agencies and consultants where necessary. The regional team has spent countless hours meeting with representatives of the tribes, the State, sports and commercial groups, in an attempt to establish a climate for successful negotiations, to understand their perceptions of the problems, and to search for an acceptable framework for a settlement.

During this time the regional team had to overcome the suspicion of the tribes that this was merely a mechanism to take away their treaty rights. We had to overcome the suspicion of the State that this was a prelude to federalizing the fisheries and then even the suspicion of sports and commercial fishermen that this was an attempt to implement the Boldt decision with no concern for their welfare.

During the same period, the staff was assembling and reviewing data in the areas of economics, resource development, and management institutions. Finally, the regional team requested proposals from any group or individual on how these problems might best be resolved. These will be received by our task force by October 26. All of the above goals have been more or less achieved and the most sensitive and delicate stage of actual negotiations is now about to begin.

In order to safeguard the success of the regional team to date, we request that the testimony before the Civil Rights Commission be postponed until after the completion of our work in late December. It is respectfully submitted by the Chairman, Mr. John Merkel, the U.S. Attorney, myself, and Dr. Lee Alverson, who represents the Department of Commerce.

CHAIRMAN FLEMMING. Mr. Hough, we appreciate your coming and presenting this particular statement. When we finish our work here this afternoon, we will not adjourn the hearing but we will recess the hearing until a date in the future, that date to be determined by the date when this task force completes its work. We will then come back to Seattle and resume the hearing and at that time we'll address questions to you and your colleagues relative to the nature of the report or the content of the report, but we appreciate your giving us this interim statement and we recognize that you are at a sensitive point in connection with the assignment that has been given you and we would not want to do anything that would impede your work.

On the other hand, the testimony that we received in the last 2 days indicates that your work is going to play a very important role in the handling of this issue. And, consequently, when you have

submitted your report, we will then examine it, read it with great care in the light of the testimony that we have received, and undoubtedly at that time we'll have questions that we will want to address to you and your colleagues.

MR. HOUGH. Now on behalf of the group we represent, we appreciate your indulgence and your patience and we fully expect to be questioned and challenged and held accountable for what it is that we bring together, and we look forward to the opportunity to share those experiences with you. Hopefully we'll be in a position to do that by the middle part of December. That's our goal. We would like to stay on schedule and if it would please you, we will keep your staff here in Seattle apprised of our schedule.

CHAIRMAN FLEMMING. Appreciate that very much. Thank you very much.

This completes this portion of the hearing in terms of listening to persons who have been subpoenaed as witnesses.

In opening the hearing yesterday morning, along with Commissioner Freeman, I indicated that when we had completed listening to witnesses who had been subpoenaed, that we would be glad to take time to listen to testimony from persons who had not been subpoenaed but who wish to testify. Commissioner Freeman indicated that any persons desiring to present their views at this particular time should indicate by noon today that that is their desire.

They were asked to register with the members of our staff. Members of the staff, I am sure, have explained the procedure which we follow in connection with our hearings when we listen to persons who have not been subpoenaed. Each person will be allotted 5 minutes. The attorney will keep time, and we will give you a warning, he'll explain that in a few minutes, and when you get the final warning, why, you can complete the sentence, but that's all. However, if you are proceeding from a written statement, you may file the written statement with us and it will appear in its entirety in the record of the hearing.

We'll ask persons to come, probably in groups of four or five, so that they can be sworn together. Then they will be recognized individually to make their own statements. Those were preliminary comments; Mr. Schwartz is going to handle this part of it, and he may want to explain just what advance warning you intend to give.

MR. SCHWARTZ. First, Mr. Chairman, I would like to explain that the Commission also has a special statutory responsibility with respect to accepting testimony which may tend to defame, degrade, or incriminate any individual. The witnesses are therefore cautioned against giving any testimony which may tend to defame, degrade, or incriminate any individual. In the event that such testimony is offered, the witness will have to be stopped and the Chair will have to be asked for a ruling on such evidence.

CHAIRMAN FLEMMING. Under our law, we cannot receive testimony of that kind in public session. That's a strict requirement of our law and we have to enforce it strictly.

MR. SCHWARTZ. Thank you, Mr. Chairman. With those preliminary notes, I would like to say that the rules that we will adopt for the open session are that each witness will be offered 5 minutes in which to testify; after the completion of 4 minutes of testimony, I will give a 1-minute warning so that remarks may be concluded in time to meet the 5-minute deadline. The time limit will be strictly adhered to.

I would also, before calling the first, like to make two statements in lieu of testimony that were submitted to staff earlier. One of them is, and I request they be marked as exhibits for the open session. First is from a Mr. James Hubbard, an attorney at law representing the viewpoint of certain non-Indian families living on the Yakima Indian Reservation. I would submit this statement, and the second one is from a Miss Mary Green MacQuillan, and that's a statement and a group of materials.

CHAIRMAN FLEMMING. Both of those statements will be without objection entered in the record of the hearing at this particular point.

MR. SCHWARTZ. I would like to call the first group of witnesses; they are Mr. Frank Ruano, Ms. Bernadine Ricker, Mr. W. Bruce Van Brocklin, and Mr. Andy de Los Angeles. Will those people please come forward and take seats at the witness table?

CHAIRMAN FLEMMING. Will you read the names again.

MR. SCHWARTZ. Once again. I see Mr. Frank Ruano is here, and Mr. Van Brocklin is here. Mr. Andy de Los Angeles, Ms. Bernadine Ricker.

FROM THE FLOOR. Mr. de Los Angeles is ill and won't be here.

FROM THE FLOOR. She's in the lobby, I think. She's here.

CHAIRMAN FLEMMING. Call two more persons here.

MR. SCHWARTZ. The next names on the list are Mr. Bruce Jim, Mr. Virgil P. Lane. [Messrs. Ruano, Van Brocklin, and Lane were sworn.]

CHAIRMAN FLEMMING. Thank you and we're very happy to have you with us.

MR. SCHWARTZ. Mr. Ruano, under the rules I just stated, we will start with you, please.

TESTIMONY OF FRANK RUANO

MR. RUANO. Commissioner Freeman and Chairman Flemming and members of staff, there's been a great to do about title insurance and a great to do about who has what ownership. I am here to speak on one subject: Jurisdiction as it relates to an area which is referred to as Port Madison; Port Madison is immediately west of Seattle, and if you were to go to the top of this building, you could see the area,

and it is at approximately 10 o'clock on the clock. I am president of the community which has some 3,500 non-Indian residents. It is the largest populated area of non-Indians on any Indian reservation for the State of Washington for its size.

I have here a document which is an abstract of title pulled from 1924. The abstract reaches back to the signing by the President of the United States granting certain lands to certain Indians. It proceeds on to show the descending line. It goes on to show how that land was then transferred to non-Indian people and it was so transferred after the request in 1910 and approved in 1914, that request was signed by the Secretary of the Interior of the United States. It was further approved by the Congress of the United States. I own property at Indianola that is prime and a heavily congested area of Port Madison. I am aware of those date transactions. I know how to read titles. There is no place in that title insurance that makes any reference to any Indian reservation, any Indian jurisdiction or any ifs, ands, or buts or where and how the property is acquired. We acquired that property knowing in advance that we would not be part of the Indian reservation because somewhere up the highway there is a sign that says you are entering Skokomish Indian Reservation, there's a sign entering or leaving—we are not inside of those signs.

Now, as a result of the Secretary, and I would prefer, if you wish to make this part of your document, if you wish it.

CHAIRMAN FLEMMING. You may make that a part of your statement.

COMMISSIONER FREEMAN. You want to leave this and have it inserted in the record?

MR. RUANO. This is the first evidence that you've had that you've been asking for all day and yesterday.

COMMISSIONER FREEMAN. I appreciate your leaving it, sir.

MR. RUANO. The property which we acquired does not show under any condition, in any manner, on any maps, that it is Indian property. This summer I became aware that the Suquamish Indians had prepared a building ordinance which would be a severe effect on the community in which we live. If you do not have a copy of this ordinance that they propose, I'll make it available to the Commission. It was a very rough and crude document against people who bought property all in fair and honest dealings, all under proper legal action, all as far as we're concerned without—with absolutely no relationship to any Indian ownership.

Some of the people in that community have been there for many, many, many years. Their children have gone to school with Indian children; they have intermarried, and they have a wonderful relationship. We have maintained that relationship. The ordinance was eventually stopped and it was stopped because we formed a group and we prepared a petition to the President of the United States. If you wish a copy of that petition, we'll surrender that to

you, and as of today we have in excess of 50 percent of the community signing that petition.

We also prepared a resolution which we delivered to the council, and that resolution was totally ignored. I have heard testimony for 2 days about the lack of participation by the non-Indian, as far as the Indians are concerned. Mr. Chairman, I personally made five efforts to contact the chairman of the tribal council of the Suquamish group by telephone, never returning to the call once and speak to parents twice. There is now a new chairman—I made an appointment with her. She cancelled the first time for reasons unknown to me. I called her to make another—I was in the hospital at the time of the appointment, and she was advised. I have since called her three times; there's been no response. I believe we are trying to make communication through the effort of the county commission in this Kitsap County; efforts have been made to try to reach the tribal council. And we're trying to do it but, Mr. Chairman, we are getting absolutely no, absolutely no reaction to the assistance we're trying to render. Throughout these 2 days you've asked people to give you suggestions to the way to help you to resolve some of these problems, may I suggest five or six of them?

MR. SCHWARTZ. You have 1 more minute.

MR. RUANO. We refer to the tribal courts. Mr. Johnson happens to be a property owner at Indianola. I don't know in a way—he was invited to attend these meetings, he has not attended, he will not attend our meetings. I do not believe that his testimony was accurate, that I could accept it. We were aware of judges with—tribal judges with education, with less than eight lawyers. We know this conflict of circumstances when you go into the tribal court or the jury is made up of Indians, that is not treating the non-Indian property. I believe that tribal court system has to be brought into play so there is no conflict of interest. I believe that all land, purchased prior to and approved by the Bureau of Indian Affairs, and approved by the Secretary of the Interior, as it is in this case, should not come under the jurisdiction of any Indian, jurisdiction or control.

We have tourists that visit this State and no one has spoken about the tourists. We have tourists harassed by tribal police. You can't expect a tourist visiting another State to be aware—

MR. SCHWARTZ. Your time is expired.

CHAIRMAN FLEMMING. If you want to round that out in writing, add the other points, we'll be glad to have you do it, and submit it for the record, and the exhibits that you have identified we'd also be very happy to have you submit for the record.

MR. SCHWARTZ. Before we continue with the next here, Mr. Ruano, state your full name and address for purposes of the record, please

MR. RUANO. Frank Ruano. I reside 16744 39th Avenue NE, and I have summer property at Indianola, Washington, Port Madison area.

MR. SCHWARTZ. Next witness, will you please state your name and address for the Commission?

TESTIMONY OF BRUCE VAN BROCKLIN

MR. VAN BROCKLIN. My name is Bruce Van Brocklin. I am the communications director of Indian Intercommunications Association. Our office is at 119 Cherry Street in Seattle.

MR. SCHWARTZ. Thank you. You'll have 5 minutes to testify, Mr. Van Brocklin.

MR. VAN BROCKLIN. Some of your staff are already acquainted with me because it was in our office that they first began some of their initial discussions when they were here in July. Indian Intercommunications Association is a private, nonprofit, educational corporation formed by a group of young Indian people who are concerned about communications careers in journalism for Indians in the Northwest.

I had not planned to appear to testify here today, I was just going to cover it for our newspaper, but between the time that I first knew you were coming and when you got here, we got many copies of *Window Dressing on the Set* and I want to commend you first of all for the information that is contained therein, despite what the writers and *TV Guide* and other places said about how old your data may have been, it is a lot better than what we had to rely on from the United Church of Christ.

I would just add in the recommendation for form 395 for the FCC [Federal Communication Commission] it would be a great deal of help to people who are concerned with journalism recruitment that the stations provide an accurate breakdown as to the positions in the news area where minorities are employed, working with the original data that we worked with, and I noticed that in your report, you're practically unable to discover where minorities are employed in the newsroom at all. I hope when you make your recommendations that you'll do something about that.

The second thing is that I'm happy to see that Commissioner Freeman is the executive board member of the National Association of Educational Broadcasters, and I would really like to give you most of the information they have prepared for you and let you enter it into the record and open myself up for the remaining 3 minutes if you have any questions about—

CHAIRMAN FLEMMING. At this point we do not address questions to the witnesses, so you use your time in any way that you want.

MR. VAN BROCKLIN. All right. I would like to relate two instances and I won't defame or slander or libel anyone in that period of time.

The first was that for the last 4 years we've been looking for money to start a recruitment and training program. I'll tick off the few things. We have to approximately 100 foundations, 50 of which are listed in the foundation category as having an interest in communications programs. We have also approached the U.S. Office of Education, Title IV, the Indian Education Act, 4 years in a row for recruitment and training of Indian students and journalism in the high schools. We approached Title IX of the Elementary and Secondary School Act, ethnic heritage, with the project called "Using Indian Newspapers in the High School Classroom as Curriculum Materials," 3 years in a row, and we approached church groups and philanthropic organizations. My two anecdotes—the first one I won't mention the church group, but it is a major one in Washington, D.C. When I presented my case to them, their response about the worthiness of our projects was and this is a quote, "We don't see how the training of Indian journalists can be a positive force for social change."

My second observation, and this again relates to something that I'm going to turn over to you. You asked several people how they felt about media coverage in Seattle and whether they thought that it was fair. Yesterday morning I awoke listening to an all-news radio station in the city. I won't give the call letters. One of the featured things that they do each morning is when there's something unusual that comes over the wire service that they might be able to provide a local angle for, they will make a telephone call to an official or a person in a group and ask for their comments.

This happened to be when the United States Secretary of the Interior yesterday announced that he was going to take personal jurisdiction over the issue of turning lands from the Puyallup Tribe back into trust.

MR. SCHWARTZ. You have 1 more minute.

MR. VAN BROCKLIN. This is something our congressional delegation has been very concerned with. What happened on the radio station was that on the air they called up the city manager of Tacoma, and asked him what he thought of the Secretary's decision concerning this Indian problem your city has. And for the next minute and a half the city manager went on to discuss it, and the newscaster said, thank you very much, and then to the listening audience, said, "We'll continue to keep you informed on Tacoma city problems with the Indian," and that was the end of the report. We wrote a letter to that station as we've done before, and asked them to please try and get the Indian point of view.

In summary, let me say that I will be turning over our testimony that we made before representatives of the local radio and television stations this spring saying that we were going to be reviewing and

evaluating their petitions for renewal which will come up in the spring.

CHAIRMAN FLEMMING. Thank you very much.

MR. SCHWARTZ. Will the next witness, I believe it is Mr. Jim, please identify yourself fully for the record and give your name and address?

TESTIMONY OF BRUCE JIM

MR. JIM. Bruce Jim, and I represent the United Columbia River Fishermen, of which I am the vice chairman. I'm going to read a little statement that I brought up here to the Commission and I'll turn this over to the Commission afterwards.

Honorable Arthur Flemming and Members of the Commission, I am Bruce Jim and I am enrolled in the Confederated Tribes of the Warm Springs Indians. I represent an organization of Indian fishermen who fish primarily on the Columbia River and tributaries along the Oregon and Washington shores. There are approximately a hundred members of our association consisting of Warm Springs, Yakima, Umatilla, and Nez Perce tribes. We fish pursuant to the rights reserved by our forefathers to us forever by virtue of the treaty of 1855.

I come to you, the United States Civil Rights Commission, to advise you that our rights are being eroded aggressively and systematically by the State of Oregon through its fish and game department, the Oregon State police and its law enforcement agencies connected therewith, and by the State of Washington through the Washington State game department agencies and the law enforcement agencies connected therewith.

That if it were not for the Federal district courts of the State of Oregon and Washington our treaty rights as Indian fishermen would not exist today. Even with the intervention and protection of the Federal courts, the State agencies with the help of the State courts are constantly attempting to destroy our treaty rights and rights of individual fishermen. The superior courts of the State of Washington time and again have ignored the Federal decision that the Federal law and the treaty provisions shall have greater authority than the State regulations imposed against us. Federal courts have had to enjoin the State courts for violating our rights which the State courts do apparently because of political consideration and in violation of our civil rights.

I document for you dozens of instances where the law enforcement agencies of the two States which intentionally seized and destroyed our property such as nets, boats, and fishing equipment unlawfully and without adequate recourse therefor. For example, intentionally dragging our expensive gill nets over rocks so they will be shredded and destroyed; deliberately cutting our nets loose anchor ropes; not only destroying our nets but leaving the nets in the river for fish to

become entangled thereon wasting them; putting water in our boat motors; invading our privacy of our homes without search warrants; seizing fish without making arrests or citations for violation of laws; maintaining surveillance of the fishermen and their families 24 hours a day; giving out traffic citations to Indian fishermen for going in excess of 55 miles per hour and letting other traffic offenders, who are traveling over 55 miles per hour, go by at a faster rate than an Indian fisherman who has been cited for the same. In my own personal case, Washington State game officials have attacked myself and my family and associates, physically abusing my children, and striking one of my associates over the head with a shotgun, seizing our fish but making no arrests or citations for violation of the law. We were told that it was the white man's territory and that Indians were not allowed in that vicinity of the Columbia River.

I can cite you many instances and document them for you where minor violations of the State of Washington regulations, Indian boats, motors, pickups, and fishing gear worth thousands of dollars have been seized, heavy fines imposed up to \$1,000 and jail sentences, whereas non-Indians for the same violation have had no seizures or equipment, do not serve jail sentences, and receive minor fines. I know of no instances where in the State of Washington or in the State of Oregon where the non-Indian fisherman has had equipment seized and disposed by the governing authority.

MR. SCHWARTZ. Mr. Jim, you have 1 more minute.

MR. JIM. Our civil rights are constantly violated and abused every day and it is done deliberately by the law enforcement officers who do so in concert contrary to our rights as human beings and as Indian fishermen. We spend thousands of dollars in legal fees and court costs in an attempt to protect our rights, and on behalf of the Indian fishermen who I represent, I ask you to help us protect our civil rights in every way possible.

Thank you very much for your consideration.

CHAIRMAN FLEMMING. Thank you very much, and you'll be sure to leave us a copy of that statement and that will appear in the record in full.

MR. SCHWARTZ. Thank you.

MR. LANE, would you identify yourself fully and give your address for the record.

TESTIMONY OF VIRGIL LANE

MR. LANE. My name is Virgil Lane. I'm a member of the Lummi Tribe. My address is 1801 Jay Street, Bellingham, Washington, and it's kind of hard for me--what I should address, there been so many issues addressed that I'm very much concerned, I guess with treaties.

Mr. Cunningham's bill introduced, you know, it has been introduced, I mean for the record, one of his bills. We fail to recognize that he introduced two bills on fishing and hunting, and I

think that should be brought to the attention of this Commission, not only the abrogation of the treaties, because we spoke of treaties today all the time, and we spoke of article 6 of the Constitution of the United States, but we fail to get into what are you talking about. We say treaties become the supreme law of the land. We fail to get section 3 of article 6, that says, Senators, Representatives, before-mentioned and members of the several State legislatures and executives and judicial officers, both of the United States and the several States shall be bound by oath or affirmation. And, yet, we continuously listen to Mr. Gorton speak and say that he can't uphold Judge Boldt's decision and yet the decision was made based upon treaties entered into the authority of the Constitution of the United States, which should become the supreme law of the land, and I think they are bound by that, if they are to take oath or affirmation in good faith, not only Slate Gorton—I shouldn't mention names, the attorney general, but the Governor and all other executive branches.

I would like to address first, that we talk to the department of social health services secretary. He says that we are afforded all the services in the department of social health services that are available under Title XX, but I would like the record to show the report to the Governor, I believe it is hand submitted for the record, I would like to know on page 11-1 and 11-2, where he stated in this report to the Governor that except for five tribes, day care centers are provided these five tribes, there are no child welfare services that are being provided to us, the other tribes. I would like the record to show, identify that book because that book is no good to Indians except them two pages that we speak of.

As far as treaties are concerned, we fail to bring out the Northwest Treaty Ordinance which the treaties were entered into, which the United States Government used to coerce the Indian, used to say these treaties will be binding forever and land and nothing will be taken without their consent. Then, we get on to the report that Jackson and others made in regard to the Cunningham statement. His bill said it cost \$450 billion to pay the Indians for their land, when the fifth amendment we discussed about, the first thing people think about is the right not for self-incrimination, but we go into the fifth amendment of the Constitution of the United States is being argued back and forth by Senators and Congressman. Does the fifth amendment apply to the Black Hills in the Dakotas when they took that land? What are we talking about? They say land, property shall not be taken without just compensation; it said did it apply to Indians when they were not citizens at that time. By the same token they recognize 1887 when the intent of the Northwest Treaty Ordinance was to swing Indians over to the side of the United States Government so they would not join with British or anyone else, you know, and they say they were entered into in good faith.

Another concern I have is what is being discussed in Congress, in the Senate right now. They both argue back and forth, the Senate version on the Hyde amendment and county amendment.

MR. SCHWARTZ. Mr. Lane, you have 1 more minute.

MR. LANE. This is my concern for not only for my race because the Senate amendment says that abortions will be available federally funded at all times.

Under the—we have another bill, Senate 2105, which is to ratification of the genocide convention. It says specifically, says that it is a crime preventing birth among a group. I see this happening, I see it happening at all times that, abortions, those concern me, is the fact that these are being made available to some of our women throughout and they make it available and then they go for two or three free abortions and then they got the tool to say you have no control over yourself, you should let us sterilize you, and that's preventing birth among members of a group. That was one of my major concerns.

CHAIRMAN FLEMMING. Thank you very much, we appreciate all of you being here.

Counsel will call the next witness.

MR. SCHWARTZ. Bernadine Ricker, Dan Clem, Oscar Hearde, John Horsley.

[Ms. Ricker and Messrs. Clem, Hearde, and Horsely were sworn.]

MR. SCHWARTZ. Ms. Ricker, identify yourself, if you will, and give your address, for the record.

CHAIRMAN FLEMMING. Were all of you in the room when we indicated the procedure that was going to be followed? Well, I would just like to emphasize the fact then it is a 5-minute rule, the Counsel will notify you when you've used 4 minutes, when you have a minute left and then also underline the fact that under our law we cannot take any testimony that would tend to defame or degrade any person.

TESTIMONY OF BERNADINE E. RICKER

Ms. RICKER. Thank you, Mr. Chairman. My name is Bernadine E. Ricker. My address is Post Office Box 327, Fort Hall, Idaho 83203. I am here today as the Chairperson for the State Advisory Committee for the United States Commission on Civil Rights for the State of Idaho. I would like to say that I had designated or requested that one of our other State Advisory Committee persons do the testimony for the State Advisory Committee of Idaho. Mr. Reverend Walter Moffett, who is Nez Perce, was unable for some reason to be here at this time. Also, Mrs. Connie Watters, who is also Nez Perce, and also a member of our State Advisory Committee is another Indian person. I am member of the Shoshone Bannock Tribe, enrolled from Fort Hall.

I would like to say in behalf of the Indians in Idaho and as you know, one Indian person, no matter what their tribal affiliation, cannot speak for a tribe. The tribe itself designates their official representatives and cast their own official votes. I did meet with the Shoshone Bannock tribes at Fort Hall, the Fort Hall Business Council, informing them of this particular hearing, and whatever they would like to bring to the attention of the Commission, and also Reverend Moffett and Mrs. Watters were doing the same for the northern part of Idaho. There are five tribes within the State: Coeur D'Alene; Kootenai, which is over the northern part of our State; the Nez Perce; the Western Shoshone at the Duck Valley, which borders Idaho and Nevada; and the Shoshone-Bannock next to Fort Hall, southeastern portion of the State.

I would like to say also that we are glad or I personally am glad that the U.S. Commission has opened the Northwest office. Before that we had to work out of Denver area and then western out of Los Angeles, and I am glad that it is here, and you are able to hold these hearings in involving particularly the tribes in the State of Washington. We are concerned on a number of things, certainly, the treaty rights tribes have and the tribal sovereignty. This was of some apprehension when I did speak with the Fort Hall Business Council, because there were four civil rights for a certain point that they did not want to negate or put in any precarious position their tribal sovereignties as the way they are as a tribe. So I would like to enforce that for the members of the Commission.

Also, the water rights is a very commanding and demanding issue that tribes are concerned with in fighting for survival. I was here as the delegate to the Title IV of the Indian Education Act, parts A and B, and we are concerned particularly in Idaho with Title IV, A, B, C funding and also Johnson-O'Malley, referred to as JOM. Idaho, because of its low student expenditures for the whole State, for all students which is so low, which is next to Mississippi, which is at the bottom and Idaho is the next. We do not have as much Federal money coming down to meet the special needs of Indian children and those are some concerns.

As yet for the particular Idaho State Advisory Committee we have not had a project in Idaho. We have been trying to get one together with the move to be regionalized for the Advisory Committee. We certainly hope that something will be done and we will continue to do something. We have people interested in it. Things that have come up are the—in the northern part of our State, in Lewiston particularly, brought to our attention by one of our SAC members, the overcrowded conditions in the jails in Lewiston, Idaho, where many more people than at—the jail was expected to hold have been crowded into them; also youth and adults are also placed into it.

MR. SCHWARTZ. Ms. Ricker, you have 1 more minute.

MS. RICKER. One particular sign that has really hit us and it was on the sign of a bar in northern Idaho, "Indians are proof that

niggers [deleted] buffalo," and these are the types of things that was held up for a week and these are some of the things that our children have to see.

In the northern and the southeastern part, the Shoshone-Bannock Tribes just were funded after 2 years, the National Institute for Alcohol, Alcoholism, and Alcohol Abuse, a grant for \$100,000. I would like to say at this time that the tribes will be submitting things, further written and documentation on their own behalf and would like to request the ledger remain open. I understand it is a 30-day process.

Thank you very much for allowing me to participate in this testimony.

Don't forget where Idaho is.

Thank you very much, Commissioners and members of the staff of the United States Commission on Civil Rights.

CHAIRMAN FLEMMING. Thank you for taking the trouble to come and making this statement.

MR. SCHWARTZ. Mr. Clem, would you identify yourself fully and give your address?

TESTIMONY OF DAN CLEM

MR. CLEM. Yes, Dan Clem, Kitsap County prosecutor. My business address is 614 Division Street, Port Orchard, Washington.

I would like to address a few issues raised by the attempt to assert Indian jurisdiction over non-Indians. In Kitsap County there was historically the Port Madison Reservation reserved for the Skokomish Indians for their use. Over the years through various Federal acts the original Indians have sold off the property to the extent that approximately 63 percent of the original reservation is now held in fee title by citizens, Indian and non-Indian alike. There are approximately 50 to 100 tribal members living within the historic boundary of the reservation and approximately 3,000 non-Indians. Recently, the tribal authorities [began], without unanimous support from tribal members, to assert alleged jurisdiction over non-Indians. It began with the arrest of a non-Indian for a minor offense. After the arrest, this person was booked in jail for approximately 5 days before the Indian authorities decided to do anything with him. This has led to the case which will be heard by the United States Supreme Court this fall of *Oliphant v. Suquamish Indian Tribe*. Historically, with few exceptions, not reservation Indians as a political group were never intended to have jurisdiction over non-Indians. In 1855 the Treaty of Port Elliott was established which created this part, the Port Madison Reservation. Although that treaty did not explicitly address itself to the issue of whether Indians were to have jurisdiction over non-Indians, that very issue arose in another treaty

with the Choctaw Indians. An opinion of the Attorney General of the United States in 1855, the same year as the Point Elliot treaty, stated thusly, the Choctaws expressed a wish in the treaty to Congress that they would grant to the Choctaws the right of punishing by their own laws any white man who should come into their nation and infringe any of their national regulations, but Congress did not accede to this request. On the contrary, it has a provision by a series of laws for the punishment of crimes affecting white men committed by or on them in Indian country, including that of the Choctaws by the courts of the United States. Several statutes are cited.

These cover, so far as they go, all crimes except those committed by Indian against Indian. That's there, Opinion of the Attorney General 174, 1855.

I say a review of Indian law implies a research conflict in court decisions and for every changing Federal request, and there is no doubt that Congress, if it wished, could settle vague and unnecessarily difficult legal issues which have arisen. Congress should act to solve these issues in a final way. Congress should act to ensure equal constitutional rights to all citizens. It is difficult to explain to the public why an employee of the Puget Sound Naval Shipyard who can earn money, who can earn the same amount as any other employee, who has the same retirement rights and benefits, who gets the same protection from the police on the highway, who can send his children to a State-supported school, need not pay his fair share of State and local taxes merely because he is an Indian and has placed his residence into trust status. No other one given the opportunity to enjoy so many benefits and yet to ignore the responsibilities of being a citizen. Let me remind you that Indians are United States citizens, the citizen of the State in which they live and citizens in this case Kitsap County. Myself, I think Indians in our historical past were not dealt with in a fair manner and Congress then chose to negotiate with him by treaty, treaties with Indians should have recognized what they were for, what they were, a contract with a group of people who were constitutionally recognized during the formation of these United States. However, treaties with Indians should not be elevated to anything more than a contract. If the conditions have changed from the time the original contracts were entered into, then perhaps the contract should be renegotiated.

Let me commend the United States Attorney General Merkel, my former boss, for attempting to negotiate a settlement of the fishing dispute in the State of Washington. But some issues are more fundamental than mere economics.

MR. SCHWARTZ. Mr. Clem, you have 1 more minute.

MR. CLEM. A non-Indian arrested for an offense on a reservation, if the Indian government does have the jurisdiction over him, and the Supreme Court will decide that, is not guaranteed all the constitutional rights a person is entitled to under our more normally

understood State and Federal criminal justice system. For instance, he is not entitled to an attorney. If he chooses to have an attorney, he must be admitted to practice law before the tribal court. And tribal court can set whatever rules they deem necessary which, in effect, could eliminate any attorney they dislike and which would also eliminate the right of an accused to an attorney of his choice. In the area of civil jurisdiction, the tribal council of the Skokomish have expressed the desire to eventually control land use, schools, fire departments, police, and taxing within the historic bounds of the reservation, and yet, they will not allow non-Indians to participate within the Indian government and the result would be control over approximately 3,000 non-Indians by approximately 50 to 100 Indians.

MR. SCHWARTZ. Mr. Clem, your time has expired.

MS. CLEM. A situation which has been addressed by our national leaders as unacceptable is Rhodesia.

CHAIRMAN FLEMMING. You will provide staff with a copy so that it will appear in full in the record of the hearing.

MR. CLEM. Mr. Chairman I would like to do that, but I'm sure the reporter cannot read my writing.

MR. SCHWARTZ. Next, Mr. Horsely, would you please identify yourself for the record?

TESTIMONY OF JOHN HORSLEY

MR. HORSLEY. My name is John Horsley, a Kitsap County commissioner. Business address: 614 Division Street, Port Orchard, Washington.

I will not attempt to give you a report of the marathon workout—in speaking of marathons, there's an old expression that I'm used to sitting through many sessions myself, and it is that the mind can only absorb what the seat can endure, and I can say all of you are to be commended for a long day.

There are two matters I wanted to have the opportunity to speak to this group about, and one is—both of them are in the spirit of the United States Commission on Civil Rights. I look about me and I note that indeed this is the title of your group, is the United States Commission on Civil Rights, not minority rights.

There is abroad in Kitsap County, which is composed of perhaps 96 percent nonminorities, grave concern when we look at issues such as the Boldt fishing decision or the recent assertions of Indian jurisdiction over non-Indians on the Suquamish Reservation, and other words around the community about other issues to come, a concern of where non-Indians look for support in the Federal Government. Earlier this summer, the Suquamish Tribe indicated the intent to assert civil jurisdiction for land use planning control over the non-Indian, the 50 Indians on the reservation over 3,000 or so non-Indians on the reservation, and the community, which is composed, and I think the terms I would use of gentle, good, and kind

people, both Indian and non-Indian alike, who have got along for years, excellently. This is not a racist community, this is not a divided community, this is a community that has a sense of joint community. But this assertion of jurisdiction began to divide that community, so Dan and I, in order to seek a clarification, went back to Washington, D.C. We met with our congressional delegation. We met with the Secretary of the Interior. We discussed our situation with top legal counsel there, and at every turn we met with frustration, and when we returned to the community to meet with the various Suquamish—we met with the Suquamish Tribal Council, we met Suquamish Community Club, we meet with the Indianola Community Club, and the word we had to convey to them is there is no one in the United States Government you can turn to for fair treatment that we could identify at the time.

The American Indian Policy Review Commission held its hearings a year ago. Members of this community attended and attempted to give testimony to members of this commission. They thought it was a railroad job. They were extremely frustrated by the proceedings and the procedure they endured during the proceedings of that group. So when we heard that your group was going to come to this community we were very interested in hearing what you would hear before you, and again we're disappointed. We're not convinced that you've held or heard a balanced record. There is a great record of injustice to the Indian community in the West in this country, but the concern I wanted to convey to you is that the non-Indians are angry, they are frustrated, and they are bewildered as to who in the Federal Government they can turn to to ensure that their property rights and civil rights are indeed going to receive protection as we go through the turmoil of uncertain jurisdiction over civil jurisdiction, over criminal jurisdiction, over land use, and property rights. That's one thing I wanted to convey to the Commission.

The second thing I wanted to convey to the Commission is that we'll leave the assertion and the protection of our governmental rights to our prosecutor, but what I, as a county commissioner, am attempting to do, and we're very pleased with the cooperation we are receiving from the Klallam Tribe and from the Suquamish Tribal Council, is what we can achieve working in cooperation to meet the needs and the demands of both of our communities. And I'll be glad to submit for the record the membership of Indian citizens in our community on the various policy advisory boards and the other steps that we're attempting to take through our conference of employment and training program to allow employment opportunity, more employment opportunity by Indians in our communities and the other steps that we're taking in cooperation with these governments to cross-deputize the members of our law enforcement staff, etc., to work together to meet the needs of both Indian and non-Indian alike.

CHAIRMAN FLEMMING. Thank you very much. We'd be very glad to have that.

MR. SCHWARTZ. Mr. Hearde, would you give your full name and address, please.

TESTIMONY OF OSCAR HEARDE

MR. HEARDE. My name is Oscar Hearde. I reside at 4359 South Bennett Street.

I would like to start my testimony by indicating that I'm not here to speak as a professional in no sense of the word. I am speaking as a concerned citizen. I have not planned on coming to the hearing, but after picking up this morning's newspaper and reading the paper this morning, I guess I was compelled, so to speak, to come, and then when I searched my mind back to see where Mr. Cunningham had introduced legislation to abrogate the treaties, I began to look into Webster to see what was the meaning of treaties, and after I looked in there a little bit, it concerns me that it seemed to me like something was going wrong. So I came to this hearing to express my concern not only for the Indian community, but for the rights, the rights and the human rights of all minorities.

Now, the statement that was made here by Mr. Gorton yesterday indicates to me that he might be a part of the problem. What I'm saying is, when we have our elected officials come out with the type of statement about citizens and since the Boldt decision we've heard this type of talk in this community about the Indian fishing rights, and it is growing and it is frightening. My own belief is that this Commission really should take a look at this whole community, and when I say community, I mean this whole State in the field of civil rights. I sat through a hearing, part of the hearing here this morning, and I heard something about no Indian people being in the administrative level, and second, certainly, no other minorities were in any field. You can start with the human resources department here in the city of Seattle and find out how many minorities that are at that administrative level.

My own belief is that these laws came about for the protection of the citizens during the civil rights era back in the sixties, and I think it would only be fair and right that the people that brought attention to this country that we had a problem both with the Indians and other minorities would be given a chance to receive some of the rewards of the system.

Now, when we began to speak about doing away with the treaties, going back to the Indian treaties again, I believe that the Indians in this country is a nation within this nation.

MR. SCHWARTZ. You have 1 more minute, Mr. Hearde.

MR. HEARDE. And I'm sure that the Constitution when it made, the agreements with the Indians, it was for that very purpose.

I landed in New York City from overseas and the first thing I saw was the Statue of Liberty. I was very pleased to see this nation again, but then my mind had to come back to where did this nation come

from. When I remember about when this country was discovered and we found the Indian people here and we gave them the fishing rights for this big beautiful country we have, then I wonder how can any of us, other than the Indians, think that we own this country and the Indians are supposed to go some place and take a dive.

Thank you.

[Applause.]

CHAIRMAN FLEMMING. I want to thank all four members of this particular panel for their presentation. Thank you.

Counsel will call the next witnesses.

MR. SCHWARTZ. The next witnesses are Mr. Robert R. Comenout, Sr., Herbert L. Barnes, Michael Areillo, and Violet Hillaire. Those people please come forward.

[Ms. Hillaire and Messrs. Areillo, Barnes, and Comenout were sworn.]

MR. SCHWARTZ. Mr. Comenout, would you identify yourself by giving your full name and address for the record, please?

TESTIMONY OF ROBERT REGINALD COMENOUT, SR.

MR. COMENOUT. My name is Robert Reginald Comenout, Sr. My address is 1315 West Stewart Avenue, Puyallup. I am chairman of the Snoqualmie Tribe of Indians. I have spent half my lifetime living off the reservation, and half my lifetime living on the Yakima Reservation, and I feel well qualified to present the problems both on and off the reservation, especially in the unique and special status of being a landless or unrecognized tribe.

We of the Snoqualmie, as well as some of the others, the five intervening tribes in Boldt courts are probably the most grossly discriminated against people in the United States. I have numerous individual cases that are too numerous to present at this time. But in education I would like to state that the complexity of the problem if I may use an analogy, if I made the statement to you that pusamenity [phonetic] of cessation jeopardizes the doctrine of extraterritoriality, you would be somewhat confused as to what I have said. By virtue, if I may explain what I meant, that is the dominance of the dominion over the predominating demand. You would be just as confused by the answer as you were of the original statement. This is the problem in education and dealing with Indian people. In all phases of education and in education, you have two concepts, you have the concept of curriculum, you have the concept of instruction. These work hand in hand. You have nothing if you have curriculum without instruction without the instructors.

The fishing dilemma, the Indian people had a way of resolving their problems. If two Indians were fishing on the same stream, they would be fishing on opposite banks. They had an agreement; you fish on your side, I fish on mine, nobody fishes in the middle, that's where the trouble begins.

The two cases that I would like to bring about is one involving a 90-year-old gentleman who was a senior member of our tribe. He owns 105, over 180 portions of his land which is over half. There are approximately six or eight people, minors included, that have shares of five over one-eightieths. There are four of those, there are five that have two over one-eightieths. These were the lesser portions forced by the land sale. The land was taken out of trust to allow this land sale which was allowed in a State court. The gentleman was not given proper notice of the sale. He can neither read nor write. The money had sit in this court for 1 year when he was told of the sale. In the interim, he had been receiving social security benefits.

Then when he was apprised of the sale and told to come in and get his money, fortunately he had this money returned to a trust status.

MR. SCHWARTZ. Mr. Comenout, you have 1 more minute.

MR. COMENOUT. The sale was forced upon him by virtue of a denial of his social security benefits so that he would draw from this trust money to consummate the sale.

One of the other problems is in welfare. I was helping a lady with a welfare case and I went into the Puyallup office, I went in there at 1:55 p.m. and signed a roster and and at 2:15 was told, I was told I would be seen shortly. At 2:35 p.m. talked with supervisor and at 2:37 p.m. talked to Mrs. Ray. [At] 2:50 p.m. Mrs. Ray questioned another supervisor. I was referred to Debbie Griffin, 3:10 p.m.

MR. SCHWARTZ. Mr. Comenout, your time has expired, I am sorry.

CHAIRMAN FLEMMING. If you would like to complete the facts on that particular case and give it to us, we'll include it as part of the record but your time has expired. But if you just write out the rest of that case, and we will be glad to include the whole case in the record.

MR. COMENOUT. Would I be able to submit other cases?

CHAIRMAN FLEMMING. If you've got other cases that have been written up, yes, we'd be very glad to receive it.

MR. COMENOUT. Thank you.

MR. SCHWARTZ. Mr. Barnes, would you please give your full name and address for the record?

TESTIMONY OF HERBERT L. BARNES

MR. BARNES. My name is Herbert L. Barnes. I am a Blackfeet Indian, residing away from my reservation in Montana. I have lived 35 years on the reservation and spent the last 35 years in this area. And I am speaking today only as a observer. I have had the privilege of addressing committees before, and many of them. Every 4 years it seems I'm called on to address another committee to try to answer the same question that I began with 50 years ago. Now that's, takes time, doesn't it, for the system that we live under to exercise some prudent answer to difficult questions?

You have heard the grievances of many people here. I understand what their feeling is, just as I understood my father's and my mother's. I was an orphan boy, see. I was raised by the family of Indians. They've destroyed our families now so we don't have that close association in the Indian world. Every father, every man was my father who helped teach me, and every mother helped nurture me, tell me what the rules are and what the laws are. I appeared before this group, committee in 1973, and I'll read a statement that I made at that time.

Indians continue to suffer inequities, thrust upon them by administrative acts that are not subjecting their directives and policies to conform to treaty obligations.

I have listened now all day to the same questions. Hearing the same grievances that I have heard all my life, sir. I think it is about time that the Indians have put before them an exact term of what a treaty means. This is all we've ever asked for. You understand what a treaty means. We understand it. My forefathers said, listen—they were trying to deal for some more of his land and they said, "Listen, we understand what you're saying. We see that big pile of money, sure, that would last us and we could live high, but, no, we don't want that pile of money. This little bit of land that we set aside is land for our homes and land for us to hunt on. We want this preserved forever, and will you agree to that."

The treaty maker said, "Why, yes, and this is forever."

Now you can talk about law and the legal beagles I hear exploiting their knowledge, but common sense tells you that a treaty is law—

MR. SCHWARTZ. Mr. Barnes, you have 1 more minute.

MR. BARNES. And if we have law, then let's abide by the law. That's that I all ask you as an older Indian. I'm retiring now and the younger generation are coming up, and I have great faith in them, because they understand the basic premises for life itself. We want to reconstruct our family, we want to abide by the law and I say, Commission, help us to generate fairness in law, that's all we ask.

CHAIRMAN FLEMMING. Thank you.

MR. SCHWARTZ. Mr. Areillo, please give your full name and address?

TESTIMONY OF MICHAEL AREILLO

MR. AREILLO. Michael Areillo, 7th Avenue in Seattle, Washington.

The reason why I'm here is I feel that everything that's been going on here today is very relevant to the Indian people. People just don't understand what it is to be Indian or part Indian unless they are Indian, and the thing I want to give as an example was I came out West from New Jersey. I hitchhiked out here, I, you know, took a lot of risks getting out here and I came to Seattle, I've been in Seattle for a month. When I first came to Seattle, I made the rounds and hit

every hotel that I could think of and found in the phone book and some that weren't even in the phone book because what I do, I'm a maintenance man and I do maintenance in old buildings because that's what I'd know well. I go in and talk to people, and people who are in some sort of authority, hiring positions, hiring authority, and we get talking and talking and talking and all of a sudden they come out with the statement, "You're part Indian, aren't you?" And personally I'm very proud to be part Indian myself, and I say, "Yes, sure; that is right, I'm part Navajo," and they turn around, and say, "Okay," they go back to doing something and then they would say, "Well, we're sorry but we don't have this position open right now."

Then what I would do is because I sort of had inklings that it was due to discrimination, I went ahead and I called the same people who I had seen during the day later that day and I went and picked a name out of a phone book and said, "Well, my name is so-and-so, I'm looking for," the first thing that came out of their mouths was, "Oh, sure, we have that position open, come down and see us."

And then I automatically knew. I feel that that sort of thing shouldn't exist in a country that has gone in 200 years from coast to coast and has been able to put men on the moon. Thank you.

CHAIRMAN FLEMMING. Thank you. Appreciate it.

MR. SCHWARTZ. Violet Hillaire, will you give your full name and address for the record?

TESTIMONY OF VIOLET HILLAIRE

MS. HILLAIRE. I am Violet Hillaire, a member of the Lummi Tribe and I represent our tribe on a health board that involves four tribes within our area and also am the advisory chairperson for our Portland area Indian health board that involves three States in the Northwest.

But what I would like to verify from some of our tribal representatives' testimony yesterday was stated that we employed 100 people within our tribal enterprise and I just want to correct that. We have 180 employed in that tribe, in that enterprise, which is a business arm of our tribe, and in the tribal operations we have 150. I just wanted to get on record clarifying that because I wanted to justify the Federal monies that are coming into our reservation because we are employing more people and training them and this has an effect on the fishing issue also because the task force that visited our reservation indicated that we should not try to exercise our full treaty right, that he said he had rights and he doesn't exercise them to the fullest. Well, neither do we. If we didn't have these types of employment, all of our people would have to depend on fishing. Even though we love to be fishermen again as we were before.

Also, in response to Terry Unger yesterday, he said 70 percent of our land was sold. That's not true. We still have 5,000 acres of

tidelands there and 7,500 acres of upland, so he gave misinformation there, and also, I wanted to state that since last year there have been many for sale signs up with non-Indian owners within our reservation. So that tells us something, that they are submitting to us assuming the jurisdiction within our reservation.

Another one I wanted to address was at the time of the Bureau of Indian Affairs creating tribal constitutions for tribes now which govern our tribes, I really feel that our tribes didn't have any technical assistance in getting any input into what those constitutions would be saying and how they govern us. I'm only speaking of our tribe. Maybe some are okay, but many of them are the cause of our problems today.

The other thing is on enrollment. It's a policy of the Bureau of Indian Affairs if a child is born out of wedlock to a mother, that that child is enrolled in its mother's tribe even though she is a full-blooded Indian or that child then it is declared a half-breed to what we don't know, we said to non-Indian and I think it is obvious if they're Indian or part white or part black or whatever, I think it should be up to us to determine what that blood quantum of that child is, not the Bureau of Indian Affairs.

Another issue is a national health insurance which is proposed legislation now. The Indians have to demand and urge the Secretary of HEW to consider an Indian on this planning task force. I don't think we should have to do that. It seems we have to fight for every area that we want representation on. We got an Indian on there, but our concern there is that national health insurance could terminate Indian health service and that is a treaty right that we want to maintain. For the first time in history that Indians are being involved in the planning of health programs for their people.

Another issue is Indian Health Service imposing priorities and policies for us, such as abortion, and I feel strongly against this because I know it is a personal decision, but I think we're the minority of minorities and I think that's one way the government figures they can terminate our race.

MR. SCHWARTZ. Ms. Hillaire, you have 1 more minute.

MS. HILLAIRE. Also, President Carter's message to Congress, well, he had no mention of Indians in there even though a lot of Indians had input into it, you know, previous testimony on Title XX, child welfare, and all this. I want to know what happened to it and ask you folks to help us find out what happened to that. NCAI has all that information and I will submit all the information and documentation of what I am addressing here.

And the Bergstrom memorandum, I wish you would look into that. Our attorneys analyzed it, what it says, they had 175 social science professionals out into Indian communities to impose termination policies on Indian tribes, and I think that is what's happening today. This is why a lot of internal problems are happening within tribes,

and I know it has happened to us and I'm sure it is happening to other areas.

Thank you.

CHAIRMAN FLEMMING. Thank you very much. Thank all of you. Counsel will call the next witnesses.

MR. SCHWARTZ. Mary E. Revey, Geraldine Bill, and Kris Milroe. Would those people please come forward.

[Ms. Bill, Mr. Milroe, and Ms. Revey were sworn.]

MR. SCHWARTZ. Ms. Revey, would you please identify yourself, give your full name and address for the record.

TESTIMONY OF MARY REVEY

MS. REVEY. My name is Mary Revey, and I am Lummi. Address: Post Office Box 22, Marietta, Washington, and incidentally here as a concerned parent for my children that are in—they are not any longer in school, they are dropouts. I have one that is going for GED and I have two more I am trying to get into boarding school because they can no longer go back to the public school because of their treatment there. And I really feel bad about this because they're all boys and they have got to support their families and they can't do this fishing. I wish there was a way my children go to school and finish. That's all I have to say.

MR. SCHWARTZ. Ms. Bill?

TESTIMONY OF GERALDINE BILL

MS. BILL. Yes, I'm Geraldine Bill. My address is 3256 Valch Road, Valch, Bellingham, Washington. I'm also Lummi, and I am Johnson-O'Malley coordinator, also.

MR. SCHWARTZ. Please give your testimony.

MS. BILL. Well, I would like to have on record that our Johnson-O'Malley staff is still no longer in the school system, and I think this is part of the problem that our students are dropping out of school and cannot cope with the situation that they have to face every day, and our staff people weren't in there last year and they're not in here this year, either, because of the funding, the direct funding to the Bureau, and last year we had 43 Indian students recommended to attend the Education Center, which is at Lummi, because the teachers, principals, psychologists, in Ferndale in our school districts were not able to handle our students or even deal with their problems. So they were recommended to attend the Education Center for their schooling. That is my concern and I think that on account of our staff people not being able to be in the school district.

Our superintendent stated yesterday that the school district had presented an agreement to the tribe, but he did not mention that the tribe had first presented the school district with an agreement for our staff to be in the school system and our agreement was rejected

four times, and our people just more or less give up on trying to negotiate with the school administrator, so it's not being done right now. And I also mentioned to our administrator that I was concerned about their attorney, who represents the district, because I sat in on one of the negotiating meetings and he had made a statement that he owns 40 acres of land on the Lummi Reservation and that he did not agree with the sovereign water, sewer district, anything that the Lummis were trying for, and I think that he had a lot of personal opinion or feeling against our people to begin with, and the superintendent thanked me for the concern I had, but nothing was said or done about it after that.

These are things that I am really concerned about. Another concern I have is the Johnson-O'Malley is backed up by a treaty, it is an act of Congress, and under Public Law 93-638, which gives the Indians the right to contract for contracts, and what I would like to find out or what I would get an answer for is why are we denied the right, a treaty right of contracting and being able to serve our students in the district, why are they denying the students the services, I guess? And why are they denying us the right for self-determination by not letting us serve the students as we should?

I feel that the people who do not understand say that Indian people get everything for nothing. This is not true. The non-Indians are taking away what little rights we have left, and I guess that's about all I have to say.

CHAIRMAN FLEMMING. Thank you very much.

MR. SCHWARTZ. Will the last witness please identify herself for the record, give your address, too.

TESTIMONY OF KRIS MILROE

Ms. MILROE. My name is Kris Milroe. I live at 1721 14th Street, Seattle, and the reason that I came to offer some testimony today was I belong to a Native American Solidarity Organization Committee which is a national organization that has been in existence for about 2-1/2 years and the sole purpose of this organization nationally and locally is to counter some of the racist images that the media, that the school system, and other institutions have put out about what Indians or what treaties are all about and what the meaning of sovereignty is.

I feel that today there's been a lot, you've heard a lot of testimony from non-Indian people concerning their fears about what might happen of which most of these fears have not actually been true, nothing has been acted on and I think it, as non-Indian people, we have to admit and look back at the history of the country and see that for 485 years there has been continual day-to-day harassment, cruelty, and genocide and killing on every level and stealing of land of 40 million of acres of land, and we cannot deny that that has happened and that does exist. As non-Indian people, we must look

back on history and learn those kind of things and try to counter the racist images that are put on, whether it is on television with John Wayne movies or from total lack of information we receive in our high schools. I am a high school graduate in this country and I never learned one thing; the only thing I learned was that Columbus discovered America as if there's no one else here beforehand. I feel that kind of education has not prepared me in any way to understand what treaties mean, to be able to live next to or on a reservation in anywhere in the United States. I'm not prepared to be a citizen of this country because I have no idea what that means. For those reasons, other people like myself who are community-based people, just people living and working here, have decided to form an organization to counter those kinds of things on a grassroots level.

We do a variety kinds of things, such as education with librarians, doing bibliographies; we have a slide show we take around to schools and community organizations. We try not to just to gear our efforts at high school level or adult education programs but there are a lot of adults throughout the United States and that are not involved in some kind of education program, they are involved maybe in a church group or a community group or some other kind of formal organization, and we're trying to approach those individuals and discuss the racism which has been institutionalized in the United States and try to knock down some of the stereotypes and images of Indian people and we feel it, as non-Indian people it is our responsibility to begin some of this work and we're attempting to do that, want to enter into the record that we are groups of people other than the Interstate Congress who are concerned about the issue.

I have a statement here from our organization as well as documentation of harassment and genocide that was submitted to the International Nongovernmental Organization Conference on Discrimination that was held in Geneva, Switzerland, part of the UN project, September 20 through 23 of this year, and we aided in documentation of some of these kinds of harassments that we're talking about or things that we talk about when we go out to other organizations. I would like to submit a copy of that as well as submit a copy of the statement to our organization.

CHAIRMAN FLEMMING. We'll be delighted to receive it.

Ms. MILROE. In regards to particularly in some of the questions that you asked what specifically could we do, one very specific that we would like to see and would like very much for your Commission to encourage would be a change in Columbus Day. Columbus Day is a Federal holiday. It is celebrated, quote, in all the schools, unquote and that is one way where children learn—

MR. SCHWARTZ. Ms. Milroe, you have 1 more minute.

Ms. MILROE. —about what Indians are. We would like to see October 12 from this day forward change from Columbus Day to international solidarity with indigenous people, that our organization would like to see a thorough investigation of the Indian Health

Service which has done illegal and unapproved sterilization of Indian women for the last 200 years, and we would like to see better training of teachers in the educational system, and until that time we would like to have other community organizations included in the kind of education that is done in high schools or adult education so that other people can bring information in if teachers are not prepared to do so.

That's all.

CHAIRMAN FLEMMING. Thank you very much. If you've got one or two other points that you wanted to add, why just add them in writing and they will be part of your total statement.

Thank you all very much.

This completes the 2 days of scheduled hearings. Before recessing the hearing, as I indicated I would do earlier, I would like to express our deep appreciation to Mr. Baca and Mr. Alexander and all of their associates for the very fine work that they have done in preparation for this hearing, and I want to express particularly our appreciation to the members of the regional staffs for the work that they have done. Our host has been Mr. Brooks, and he's been a very fine host in every way, but in addition to that he has been joined by Ms. Witt, Regional Director from the Denver Regional Office, and some of her associates and we're just very grateful for the support that we have had from the field staff. I know that Mr. Baca and Mr. Alexander would want to join in that because they couldn't possibly have done the field work that has been done without their help and their assistance.

I make it very clear as to where this stands or I try to make it very clear as to where we stand. I indicated, after we received a statement from a representative of the task force, that we would recess this hearing to a date following the submission of their report to Washington. Once that report has been submitted to Washington, made public, we will return and continue these hearings. We will have, as the principal item on our agenda, the report, and then we will question those who participated in the preparation of the report and there may be other witnesses that we will want to call in connection with the report or possibly because of some gap we've identified as a result of the hearings that have been held the last 2 days. After we have completed the hearings, after we have returned and completed the hearings, then the Commission will evaluate the evidence that has been developed as a result of staff work and at the hearings. We will prepare a report based on that evaluation and we will arrive at findings and recommendations which we will make to the President and to the Congress. Of course, as soon as our report has been completed and we have arrived at our findings and recommendations, they will be made public.

With that, I will ask, can you think of anything else? Commissioner Freeman? Commissioner Freeman says that it has been good to be here and I agree with her. It has been a rather intensive educational

process we have gone through, but one that has certainly been very exciting. With that, we will declare the hearing recessed until a future date to be determined by the Commission.

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